Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

JAMES G. AKERS,

Petitioner,

v.

CAROLYN P. BISHOP, *et al.*

On Petition For Writ of Certiorari
To The United States District Court For The
Middle Tennessee District-Nashville Division

PETITION FOR WRIT OF CERTIORARI

James G. Akers, *Petitioner*
4708 Trousdale Drive
Nashville, Tennessee 37220
Telephone: 615/834-2843

THE PETITIONER, James G. Akers, **without counsel**, seeks a writ of certiorari from this Honorable Supreme Court of the United States of America - thereby remanding Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1985 & TITLE 42 U.S.C. § 1985(3)" as filed in United States District Court for the Middle Tennessee District-Nashville Division, on November 21, 2000 [Case No. 3:00cv1142] back to that Court with instructions that venue shall remain therein, for full adjudication of all matters with respect thereto, for those reasons hereinafter set forth. Alternatively, **and in a separate action**, Akers will seek a writ of mandamus directing the United States Court of Appeals for the Sixth Circuit to recognize and accept jurisdiction of Akers' appeal docketed in that Court [Case No. 01-6243] on October 16, 2001, pursuant to the "Collateral Order Doctrine" set forth in, e.g., ***Armstrong v. McAlpin***, 625 F.2d 433, C.A.N.Y. (1980), citing ***Cohen v. Beneficial Loan Corp.***, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949) **in conjunction with TITLE 28 U.S.C. § 1292(a)(1)**; or a writ of prohibition precluding further hindrance of Akers' prosecution of the herein claims. **There remains no other tribunal in which to obtain the relief sought herein.**

QUESTIONS PRESENTED FOR REVIEW

(I) Whether venue properly lies with the United States District Court for Middle Tennessee District-Nashville Division;

(II) Whether the "ORDER" transferring venue to Eastern District of Kentucky, at Lexington, is "collateral to the merits" of the case;

(III) Whether transfer of the case to United States District of Kentucky, at Lexington, will result in irreparable damage to Akers;

(IV) Whether the issues respecting transfer of case to the Eastern District of Kentucky, at Lexington, are "too important to be deferred until the whole case is adjudicated"; &

(V) Whether "ends of justice" require venue to remain in United States District Court for the Middle Tennessee District-Nashville Division.

PARTIES TO THE PROCEEDING

PLAINTIFF-PETITIONER:

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(d) **CBT Does 1 through 40** [known only as that group of "persons" at Central Bank & Trust Company, Inc., Lexington, Kentucky, and yet unidentified];

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(h) **SCC Does 1 through 50** [known only as that group of "persons" at Southland Christian Church of Lexington, Inc., Nicholasville, Kentucky, and as of yet unidentified pursuant to discovery herein];

(j) **Thomas L. Clark;**
(o) **Lou A. Red Corn;**
(r) **Rebecca M.. Overstreet;**
(s) **Cindy G. Schwartz;**
(u) **Todd D. Ferguson;**
(w) **Pamela R. Goodwine;**
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(l) **FCS Does 1 through 30** [known only as that group of "persons" at the Office of the Fayette County (Kentucky) Sheriff, Lexington, Kentucky, and, as yet, unidentified pursuant to discovery herein];

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[1] The **Commonwealth of Kentucky has not been named** as a party hereto.

(m) **Pamela Miller**;
(n) **FCS Does 1 through 60**;
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(p) **CAO Does 1 through 20** [known only as that group of "persons" at the Commonwealth's Attorney's Office for Kentucky's Twenty-second Judicial District, Lexington, Kentucky, yet unidentified];

(p) **FCC Does 1 through 10** [known only as a group of individual "persons" at the Office of the Fayette (Kentucky) Circuit Court Clerk, Lexington, Kentucky, and as of yet unidentified];

(t) **Earnest W. Williams**;
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[2] The **L.F.U.C.G.** has not yet been named as a party to this action but will be added by "Amended Complaint" as the result of its voluntary entry herein.

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[1] Title 42 U.S.C. § 1988(a) is quoted within **"ARGUMENT I"**, page 22 hereof. **All** remaining **"CONSTITUTIONAL PROVISIONS & STATUTES"** cited are quoted in Akers' Memorandum [**"EXHIBIT USSC-11"** hereto, at pages 5-19].

INTRODUCTION

On November 21, 2000, the Plaintiff-Appellant, James G. Akers (hereinafter "Akers"), **without counsel**, and in strict accordance with Title 28 U.S.C. § 1654, filed his "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)", [D.E. #1] together with Akers' extensive and contemporaneous "MEMORANDUM & MEMORANDUM OF LAW" ["**EXHIBIT USSC-11**" hereto] and contemporaneously-filed "APPENDIX/RELEVANT EXHIBITS" (hereinafter "Akers Complaint"; "Akers' Memorandum"; & "Akers' Appendix", respectively) in the United States District Court for the Middle Tennessee District-Nashville Division. Jurisdiction was asserted pursuant to provisions of the Federal Statutes themselves; and venue was asserted on the basis that **"the prevailing acts"** as alleged in Akers' Complaint had taken place within the Federal District of Middle Tennessee District-Nashville Division. "Diversity of citizenship" of the parties, **at most, a secondary consideration**.

The factual allegations within Akers' Complaint, when coupled with applicable Constitutional, Statutory, and Common Laws of the United States of America and those "authorities" in support thereof as cited in Akers' Memorandum, will speak for themselves. **Not even a single Defendant has attempted to controvert even a single averment** and, in fact, **they can not do so without placing themselves in peril of yet further sanctions and/or penalties** under Federal Law. **The "merits" of Akers' herein case are not even arguable**.

On September 18, 2001, the Honorable Robert L. Echols, Chief Judge for United States District for the Middle Tennessee District-Nashville Division, entered his "ORDER" denying the Defendants'-Respondents various "MOTION[S] TO DISMISS" but granting transfer of the case to United States District Court for the Eastern District of Kentucky, at Lexington ["**EXHIBIT USSC-09**" hereto].[2]

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[2] See hereunto relevant excerpts therefrom quoted within Akers' hereinafter "ARGUMENT(S) I through V" & "CONCLUSION", pages 21-30 hereof.

It is apparent that the District Court either: (1) did not read Akers' pleadings in that Court; (2) did not understand Akers' pleadings in that Court; (3) did not afford due credibility to Akers' pleadings in that Court; (4) accepted the Defendants'-Respondents' fraudulent renditions of the facts with respect thereto; and/or (5) based Its ruling on a combination of "all the above".

This "Petition for Writ of Certiorari" follows the Sixth Circuit Court of Appeals' denial of Akers' appeal pursuant to Rules 4 & 28(a) of the Federal Rules of Appellate Procedure together with the "Collateral Order Doctrine" as set out in, e.g., **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)**, in which the United States Supreme Court held that "...**certain orders were immediately appealable** (1) if they were **collateral to the merits**; (2) if **denial of an immediate appeal would result in irreparable damage to the party seeking review**; and (3) if the issue raised was "**too important**" to "**be deferred until whole case is adjudicated.**"[3]

JURISDICTION (U. S. DISTRICT COURT)

United States District for the Middle Tennessee District-Nashville Division, had both jurisdiction and venue pursuant to the provisions of TITLE 18 U.S.C. § 1964(c); TITLE 18 U.S.C. § 1965(b); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3).

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[3] See also: **Clemence v. Clemence, 8 Kan.App.2d 377, 658 P.2d 368 (1983), i.e., "'Collateral order' doctrine allows appeal from interlocutory order** which conclusively determines issue completely separate from merits of action, and which cannot be given effective review on appeal from subsequent final judgement; **such order is, for purposes of appellate jurisdiction, 'final order'"** (emphasis added); **Firestone Tire & Rubber Co. v. Risjord, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981)**, i.e., "Because the litigation from which the instant petition arises had not reached final judgement at the time the notice of appeal was filed, **the order...is appealable under § 1291 only if it falls within the *Cohen* doctrine**." (emphasis added); **Abney v. United States, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977)** at FN4, i.e., "Of course, **Cohen's collateral-order exception is equally applicable in both civil and criminal proceedings.**" (emphasis added)

JURISDICTION (U. S. COURT OF APPEALS)

The United States Court of Appeals for the Sixth Circuit had jurisdiction to hear and adjudicate Akers' therein appeal, and to consider all matters with respect thereto, pursuant to the "Collateral Order Doctrine" as set forth in, e.g., ***Armstrong v. McAlpin***, 625 F.2d 433, C.A.N.Y. (1980), citing ***Cohen v. Beneficial Loan Corp.***, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949) **in conjunction with TITLE 28 U.S.C. § 1292(a)(1)**, but disclaimed Its jurisdiction pursuant to the legal theorems set out in ***SongByrd v. Estate of Grossman***, 253 F.2d 680, 683 (2nd Cir.), *cert. denied* 531 U.S. 824 (2000); ***Lemon v. Druffel***, 253 F.2d 680, 683 (6th Cir. 1958); ***F.D.I.C. v. McGlamery***, 74 F.3d 218, 222 (10th Cir. 1996); & ***Middlebrooks v. Smith***, 735 F.2d 431, 432 (11th Cir. 1984), on January 24, 2002 ["**EXHIBIT USSC-06**"].

JURISDICTION (U. S. SUPREME COURT)

The civil case from which the within "Petition for Writ of Certiorari" arises involves violations of Federal Law – some of which originated in Kentucky resulting in violations within Tennessee and, conversely, some originating in Tennessee and resulting in violations within Kentucky. **Neither** the State **or** Federal Courts within the states of Tennessee **or** Kentucky have **both** personal jurisdiction over all the parties **and** subject matter jurisdiction over all the issues.

Therefore, the Federal Courts have exclusive jurisdiction to hear and adjudicate this case pursuant to provisions of TITLE 18 U.S.C. § 1964(c), TITLE 18 U.S.C. § 1965(b), TITLE 42 U.S.C. § 1983, & TITLE 42 U.S.C. § 1985(3); and this Honorable Supreme Court of the United States of America has exclusive jurisdiction to hear and adjudicate the within "Petition for Writ of Certiorari", and consider all matters with respect thereto, pursuant to ARTICLE III-§ 2 of the United States Constitution inasmuch as the U. S. Court of Appeals for the Sixth Circuit has already disclaimed jurisdiction in Its "OPINION" and "ORDER" entered January 24, 2002 [*id.*]. **There is no other tribunal in which to obtain the relief requested herein.**

STATEMENT OF THE CASE *SUB JUDICE*

The following are edited excerpts[4] from Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" [Case No. 3:00-1142] as filed on November 21, 2000, in United States District Court for the Middle Tennessee District-Nashville Division.

COUNT ONE - CONSPIRACY

In about mid-July, 1993, in Fayette County, Kentucky, Defendants Pamela Miller, Katherine Witt, and LFG Does 1 thru 50 (known only as that group of individual "persons" and/or "public officials" within the Lexington-Fayette Urban County Government, "associated-in-fact") jointly devised, implemented, and effectuated a "conspiracy" in violation of TITLE 42 U.S.C. § 1985(2) & (3), ***inter alia***, to unlawfully deprive that "class of persons" which included Plaintiff Akers of rights, privileges, and/or immunities secured by, ***inter alia***, the Fourth, Fifth, & Fourteenth Amendments to the United States Constitution in that manner set forth in...¶¶E-12 and corresponding FN41 thereto of Akers' Memorandum; and which said "conspiracy" ultimately resulted in a "chain conspiracy" in furtherance thereof as detailed in hereinafter "COUNTS TWO, THREE, FOUR, TWELVE, & TWENTY-TWO"; and which "chain conspiracy" ultimately resulted in commission of those "overt acts" as detailed in hereinafter "COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN"; "unlawful imprisonment" as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN"; and which "conspiracy", "chain conspiracies", "overt acts", and "unlawful imprisonment" ultimately resulted in injuries to Akers in his person and property as detailed in hereinafter "COUNTS TWENTY-FOUR & TWENTY-SIX".

COUNT TWO - CHAIN CONSPIRACY

At some time shortly following August 25, 1993, in Fayette County, Kentucky, herein Defendants Bishop, Fleming,

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[4] Edited **for clerical errors only** and for format required by U.S .S.Ct. Rule 33.

Rushing, and CBT Does 1 thru 40 (known only as that group of "persons" at Central Bank & Trust Company, Inc., and herein "associated-in-fact"), jointly devised a "chain conspiracy" in violation of TITLE 18 U.S.C. § 1985(2) & (3), ***inter alia***, in the furtherance of that "conspiracy" detailed in hereinabove "Count One", to unlawfully and/or unconstitutionally deprive Plaintiff Akers of his rights, privileges, and/or immunities secured by, ***inter alia***, Article 1-Section 10 [Cl.1], & Article IV-Section 2 [Cl.1] of the United States Constitution in conjunction with the Fourth, Fifth, & Fourteenth Amendments thereto, in that manner as set forth in...¶¶E-12, E-13, E-14(d), E-16, E-17, E-23 through E-27, E-29, E-31 through E-36, E-38 through E-41, E-43, E-44, E-47, E-48, E-50(e), & E-50(f) with all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which said "chain conspiracy" ultimately resulted in commission of those "overt acts" as detailed in hereinafter "COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN"; "unlawful imprisonment" as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN"; and injuries to Akers in his person and property as are detailed in hereinafter "COUNTS TWENTY-FOUR through TWENTY-SEVEN".

COUNT THREE - CHAIN CONSPIRACY

On, or about, April 8, 1994, in Fayette County and/or Jessamine County, Kentucky, Defendants Layne and Shannon joined in the furtherance of that "chain conspiracy" as detailed in hereinabove "COUNT TWO" by committing specific "overt acts" in the furtherance thereof and in that manner set forth in...¶¶E-24 through E-27, E-29, E-31(a), E-31(b), E-31(c), E-34, E-38, E-40, E-43, E-44, & E-50(e) together and all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which said "chain conspiracy" ultimately resulted in the commission of those "overt acts" as detailed in hereinafter "COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN", respectively; the "unlawful imprisonment" of Akers as detailed in "COUNTS ELEVEN & FOURTEEN" hereof; and injuries to Akers in his person, property, and businesses as detailed within hereinafter "COUNTS TWENTY-FOUR through TWENTY-SEVEN" hereof, respectively.

COUNT FOUR - CHAIN CONSPIRACY

On, or about, June 16, 1994, in Fayette County, Kentucky, and/or Jessamine County, Kentucky, the Defendants Vaughan, Kelly, and SCC Does 1 through 50 (known only as that group of individual "persons" at the Southland Church of Lexington, Inc., and "associated-in-fact") joined in the furtherance of that "chain conspiracy" as outlined in hereinabove "COUNTS TWO & THREE" by committing specific acts in furtherance thereof in that manner as set forth in...¶¶E-41, E-42, E-46, E-48, & E-50 together with all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which said "chain conspiracy" ultimately resulted in the commission of those "overt acts" as detailed in hereinafter "COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN"; "unlawful imprisonment" of Akers as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN"; and injuries to Akers in his person and his property as detailed in hereinafter "COUNTS TWENTY-FOUR through TWENTY-SEVEN".

COUNT FIVE - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, October 28, 1994, in Fayette County and/or Jessamine County, Kentucky, the Defendants Bishop, Fleming, Rushing, CBT Does 1 through 40 (known only as that group of "persons" at Central Bank & Trust Company, Inc., "associated-in-fact"), Layne, Shannon, Kelly, SCC Does 1 through 50 (known only as that group of "persons" at Southland Christian Church of Lexington, Inc., and "associated-in-fact"), collectively and in concert each with another, with a common scheme and purpose, devised, implemented, and effectuated an intentional course of conduct in furtherance of hereinabove "COUNTS TWO through FOUR", with the intent to deprive Plaintiff Akers of his rights, privileges, and immunities secured by, ***inter alia***, Article I-Section 9 [Cl. 1], Article IV-Section 2 [Cl. 1], of the United States Constitution and the Fourth, Fifth, & Fourteenth Amendments thereto and, in addition thereto, ***inter alia***, Article 1, Sections 3, 8, & 14 of the Constitution of Tennessee, by committing specific "overt acts" in furtherance thereof and in the manner as set forth in...¶¶E-51, E-54, E-56 through E-58, & E-61 through E-68 and all

footnotes thereto, respectively, of Akers' Memorandum; and which said "overt acts" ultimately resulted in the "unlawful imprisonment" as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN"; and those injuries to Akers in his person and his property as detailed in hereinafter "COUNTS TWENTY-FOUR & TWENTY-SIX".

COUNT SIX - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, March 21, 1995, in Fayette County and/or Jessamine County, Kentucky, the Defendants Witt and FCS Does 1 through 30 (known only as a group of "persons" at the Fayette County Sheriff's office and "associated-in-fact") joined in the furtherance of that "collective and concerted common scheme and purpose" and/or "chain conspiracy" as outlined in hereinabove "COUNT FOUR" by committing specific "overt acts" in furtherance thereof in that manner set forth in...¶¶E-61, E-63, E-77, & E-79 and all footnotes thereto, respectively, of Akers' Memorandum; and which said "overt acts" ultimately resulted in "unlawful imprisonment" of Akers as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN" and injuries to Akers in his person and his property as detailed in hereinafter "COUNTS TWENTY-FOUR & TWENTY-SIX".

COUNT SEVEN - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, March 21, 1995, in Fayette County and/or Jessamine County, Kentucky, the Defendants Clark, LFG Does 1 through 60 (known only as that group of "persons" at the Lexington-Fayette Urban County Government, "associated-in-fact"), and CAO Does 1 through 20 (known only as that group of "persons" at the Office of the Commonwealth's Attorney for the Twenty-second Judicial District of Kentucky, "associated-in-fact") joined in the furtherance of that "collective and concerted common scheme and purpose" and/or "chain conspiracy" as outlined in "COUNTS FOUR through SIX" hereinabove by committing specific "overt acts" in furtherance thereof in that manner set forth in...¶¶E-61, E-63, E-77, & E-79 together with all footnotes thereto, respectively, of Akers' Memorandum; and

which said "overt acts" ultimately resulted in the "unlawful imprisonment" of Akers as detailed in "COUNTS ELEVEN & FOURTEEN" hereof and injuries to Akers in his person and his property as detailed in hereinafter "COUNTS TWENTY-FOUR & TWENTY-SIX".

COUNT EIGHT - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, November 1, 1995, in Fayette County, Kentucky, Defendant Red Corn joined in the "chain conspiracy" as detailed in hereinabove "COUNTS ONE through FOUR" and the aforesaid "collective and concerted common scheme and purpose" as detailed in hereinabove "COUNTS FIVE, SIX, and SEVEN" by committing specific "overt acts" in the furtherance thereof in that manner set forth in...¶¶E-82, E-83, E-84, E-85, E-86.I through E-86.X, E-89, E-90(a), E-90(b), E-90(d), E-92, E-94, & E-96 together with all footnotes thereto, respectively, of Akers' Memorandum; and which said "overt acts" ultimately resulted in "unlawful imprisonment" of Akers as detailed in hereinafter "COUNTS ELEVEN & FOURTEEN" and injuries to Akers in his person and property as detailed in "COUNTS TWENTY-FOUR through TWENTY-SEVEN" hereof.

COUNT NINE - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, November 1, 1995, in Fayette County, Kentucky, the herein Defendant Overstreet joined in that "chain conspiracy" as detailed in hereinabove "COUNTS ONE through FOUR" and that "collective and concerted common scheme and purpose" as detailed in hereinabove "COUNTS FIVE through EIGHT" by committing specific "overt acts" in the furtherance thereof in that manner set forth in...¶¶E-81, E-82, E-84, E-86.I through E-86.X, E-87, & E-88 and all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which said "overt acts" ultimately resulted in the "unlawful imprisonment" of Akers as detailed in "COUNTS ELEVEN & FOURTEEN" hereinafter and injuries to Akers in his person and property as detailed in "COUNTS TWENTY-FOUR through TWENTY-SEVEN" hereinafter.

COUNT TEN - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

On, or about, March 5, 1997, in Franklin and/or Fayette County, Kentucky, Defendant Schwartz joined in that "chain conspiracy" as detailed in hereinabove "COUNTS ONE through FOUR" and "collective and concerted common scheme and purpose" detailed in hereinabove "COUNTS through EIGHT" by committing specific "overt acts" in the furtherance of those "conspiracies" and "overt acts" in furtherance thereof in that manner set forth in...¶¶E-91 & E-93 and all footnotes thereto, respectively, of Akers' Memorandum; and which said "overt acts" further contributed to the "unlawful imprisonment" of Akers and injuries to Akers in his person and in his property as detailed in "COUNTS TWENTY-FOUR through TWENTY-SEVEN" hereinafter.

COUNT ELEVEN - UNLAWFUL IMPRISONMENT

As the **proximate result** of those "conspiracies" and "chain conspiracies" detailed in hereinabove "COUNTS ONE through FOUR", and those "overt acts" in furtherance thereof as detailed in hereinabove "COUNTS FIVE through TEN", Akers was unlawfully imprisoned an aggregate of **SEVEN HUNDRED TWENTY-EIGHT (728) DAYS** in custody of the Fayette County [Kentucky] Sheriff, Davidson County [Tennessee] Sheriff, and Kentucky Department of Corrections, respectively, and thereby injured in his person and in his property in that manner detailed in...¶¶122(b), 125, & 126 of Akers Memorandum, all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, ***inter alia***.

COUNT TWELVE - CHAIN CONSPIRACY/COVER-UP

Beginning on, or about, February 27, 1998, and, then, continuing through July 7, 2000, in Fayette County, Jessamine County, and/or Franklin County, Kentucky, Defendants Bishop, Fleming, CBT Does 1 through 40 (known only as that group of "persons" at Central Bank & Trust Company, Inc., "associated-in-fact"), Layne, Shannon, SCC Does 1 through 50 (known only as a group of "persons" at Southland Church of Lexington, Inc., and "associated-in-fact"), Vaughan, Red Corn, Overstreet, & Ferguson engaged in an intentional and continuing course of

conduct in the furtherance of those "conspiracies" and/or "chain conspiracies" as detailed hereinabove "COUNTS ONE through FOUR", and those "overt acts" in furtherance thereof as detailed in hereinabove "COUNTS FIVE through TEN", by committing additional "overt acts" in furtherance and covert concealment thereof as detailed in...¶¶E-97, E-98, E-99, E-103, E-104, E-106, E-107, E-108, E-110.I through E-110.X, E-111 through E-117, E-119, & E-121 and all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which such "overt acts" resulted in the further "unlawful imprisonment" of Akers as detailed in hereinabove "COUNT FOURTEEN" and those further injuries to Akers in his person and his property detailed in hereinafter "COUNTS TWENTY-FIVE & TWENTY-SIX", all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, ***inter alia***.

COUNT THIRTEEN - FURTHER OVERTACTS/COVER-UP

At some time after October 28, [1998], in Fayette County, Kentucky, FCC Does 1 through 10 (known only as a group of "persons" at the Office of the Fayette [Kentucky] County Court Clerk, and "associated- in-fact") joined in that "further chain conspiracy" as detailed in hereinabove 'COUNT TWELVE' by engaging in an intentional and continuing course of conduct in furtherance thereof by committing additional "overt acts" in the furtherance and covert concealment thereof by fraudulently redacting that portion of the "official state court record" as detailed in...¶¶E-110.V(k) of Akers Memorandum, thereby contributing to "unlawful imprisonment" of Akers as detailed in hereinabove "COUNT FOURTEEN" and further injuries to Akers in his person and property as detailed in hereinafter 'COUNTS TWENTY-FIVE & TWENTY-SIX', in violation of TITLE 18 U.S.C. §§ 1983 & 1985, ***inter alia***.

COUNT FOURTEEN - UNLAWFUL MPRISONMENT

As the **proximate result** of those "conspiracies" & "chain conspiracies" detailed in hereinabove "COUNTS ONE through FOUR"; and "overt acts" in the furtherance thereof as detailed in hereinabove "COUNTS FIVE, SIX, SEVEN, EIGHT, TEN, & TWELVE", **Akers was again "unlawfully imprisoned"** in an aggregate of **SIX HUNDRED SEVEN (607) DAYS** in custody of

the Fayette County [Kentucky] Sheriff and, subsequently, the Kentucky Department of Corrections, and thereby still further injured in his person and his property in that manner as detailed in ¶¶122(b), 125, & 126 of Akers' Memorandum, all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, ***inter alia***.

COUNT FIFTEEN - R.I.C.O. VIOLATIONS

In the course thereof those hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN", Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as that group of "persons" at the Southland Christian Church of Lexington, Inc., "associated-in-fact"), collectively and in concert each with another, with common scheme and purpose, devised, effectuated, and/or otherwise participated in and, thereby, committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as enumerated in subparagraphs (a) through (d) hereinafter; and used income derived therefrom to acquire, maintain interests in, and/or participate in the conduct of the affairs of the "enterprises" known as Southland Christian Church of Lexington, Inc., and "Association-in-fact" (comprised of all the hereinabove "persons" named as "Defendants" herein, both jointly and severally, and "associated-in-fact") through a "pattern of racketeering activity"; the "activities" of which said "enterprises" having and maintaining affects on both "interstate commerce" and "foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific said "predicate acts" are as follows:

> (a) On or about May 12, 1994, in Fayette County, Kentucky, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of "persons" at Southland Christian Church of Lexington, Inc., and herein "associated-in-fact"), collectively and in concert each with another, with a common scheme and purpose, devised, effectuated, and/or otherwise participated in the commission of "kidnaping" (in violation of Title 18 U.S.C. § 1201 and K.R.S. 508.130) in preparation for the hereinafter predicate acts depicted "COUNT FIFTEEN(b) & (c)" in that manner as set forth in...¶¶E-31, E-32, E-34, & E-38 together with all corresponding footnotes thereto,

respectively, of Akers' Memorandum; and which such "predicate act" ultimately resulted in injuries to Akers in his businesses and property as detailed in...¶¶125 & 127 of Akers' Memorandum;

(b) From about May 12, 1994 until June 29, 1994, in both Fayette County, Kentucky, Jessamine County, Kentucky, and/or Centre City, Minnesota, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as that group of persons at the Southland Christian Church of Lexington, Inc., herein "associated-in-fact"), acting collectively and in concert one with the other, in covert preparation for that further predicate act depicted as hereinafter "COUNT FIFTEEN(c)", and with common scheme and purpose, devised, implemented, effectuated, or otherwise participated in, the predicate act of "unlawful imprisonment" of Akers (in violation of K.R.S. 509.020 and, therefore, as well in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a)) in that manner detailed in...¶¶E-31, E-32, E-34, & E-38 with all corresponding footnotes thereto, respectively, of Akers' Memorandum; and which "predicate act" ultimately resulted in injuries to Akers in his person, businesses, and property further detailed in...¶¶125 & 127 of Akers' Memorandum;

(c) On, or about, June 28, 1994, in Fayette and/or Jessamine County, Kentucky, the Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of "persons" at the Southland Christian Church of Lexington, Inc., "associated-in-fact"), acting collectively and in concert each with another, with a common scheme and purpose, devised, effectuated, and/or otherwise participated in the additional predicate act of "theft by unlawful taking or disposition" of certain property of Akers and Coleman/Akers & Akers, Inc. (C/AA) valued in excess of $300.00 (in violation of K.R.S. 514.030 and, therefore, in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a)) in that manner as is set forth in...¶E-43 together with FN55 & FN56 thereto, respectively, of Akers' Memorandum; and which said "predicate act" ultimately resulted in injuries to Akers in his businesses

and property as are detailed in...¶¶125 & 127 of Akers' Memorandum; &

(d) On or about June 28, 1994, in Fayette County, Kentucky, and Jessamine County, Kentucky, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as that group of "persons" at Southland Christian Church of Lexington, Inc., and "associated-in-fact"), acting collectively and in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or participated in, the further predicate act of "tampering with physical evidence" (in violation of Title 18 U.S.C. § 1512 & K.R.S. 514.030 and, therefore, in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a)) in that manner set forth in...¶E-43 together with corresponding FN55 & FN56, respectively, of Akers' Memorandum; and which "predicate act" ultimately resulted in those injuries to Akers in his person, property, and businesses as detailed in...¶¶125 & 127 of Akers' Memorandum.

COUNT SIXTEEN - R.I.C.O. VIOLATIONS

In the course thereof those hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN", Defendants Bishop, Fleming, and Vaughan, acting collectively and in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or participated in and, thereby, committed those two or more "predicate acts" constituting a "pattern" of "racketeering activity" as are enumerated in subparagraph (a) hereinafter; used income derived therefrom to acquire and/or maintain interests in and/or participate in conduct of the affairs of the "enterprises" known as "Dr. John J. Vaughan, M. D.", and the "Association-in-fact" (comprised of all those hereinabove "persons" named as "Defendants" herein, both jointly and severally, corporately and individually, and "associated-in-fact") through such a "pattern" of "racketeering activity"; and the "activities" of those said "enterprises" having maintained affects on both "interstate commerce" and "foreign commerce" at all times relevant hereto, all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

(a) Beginning on, or about, June 16, 1994, in Fayette County, Kentucky, Defendants Bishop, Fleming, and Vaughan, proceeding in concert each with the other, with common scheme and purpose, devised, effectuated, implemented, or otherwise participated in, commission of the predicate acts of "wire fraud" (in violation of Title 18 U.S.C. § 1341) and "mail fraud" (in violation of Title 18 U.S.C. § 1343) in that manner as set forth in...¶¶E-2, E-8, E-28, E-35, E-36, E-41, E-42, E-48, & E-48 together with all corresponding footnotes thereto, respectively, of Memorandum; and which such "predicate acts" resulted in injuries to Akers' businesses and property as detailed in...¶¶125 & 127 of Akers' Memorandum.

COUNT SEVENTEEN - R.I.C.O. VIOLATIONS

In the course thereof those hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN", Defendants Bishop, Fleming, and Kelly, collectively and in concert each with the other, with a common scheme and purpose, jointly devised, implemented, effectuated, and/or otherwise participated in, and thereby committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as enumerated in hereinafter subparagraph (a); in attempt to derive funds therefrom for use in acquisition of, maintaining interests in, and/or participating in the conduct of the affairs of the "enterprise" known as the "Association-in-fact" (comprised of all hereinabove "persons" named as "Defendants" herein, both jointly and severally, both corporately and individually, and "associated-in-fact") through such a "pattern" of "racketeering activity"; the "activities" of which said "enterprises" having had and maintained affects on "interstate and foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

(a) On, or about, September 23, 1994, in Fayette County, Kentucky, Defendants Bishop, Fleming, and/or Kelly, collectively and in concert each with another, with common scheme and purpose, devised, effectuated, or otherwise participated in the commission of "forgery in the second degree" (in violation of K.R.S. 516.030), and

"theft by extortion" (in violation of K.R.S. 514.040), **both being violations of TITLE 18 U.S.C. §§ 1961 & 1962**, in that manner set forth in...¶¶E-50 together with FN62 of Akers' Memorandum; and which said "predicate acts" resulted in injuries to Akers' businesses and property as detailed in...¶¶125 & 127 Akers' Memorandum.

COUNT EIGHTEEN - R.I.C.O. VIOLATIONS

In the course thereof the hereinabove "COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN', Defendants Bishop & Rushing, acting in concert each with another, with a common scheme and purpose, devised and/or effectuated and, thereby, committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as are enumerated in subparagraph (a) hereinafter, in an overt attempt to use income derived therefrom in the acquisition of, maintaining interests in, and/or otherwise participating in conduct of the affairs of the "enterprise" known only as the "Association-in-fact" (comprised of all hereinabove "persons" named as Defendants herein, jointly and severally, and "associated-in-fact") through a "pattern" of "racketeering activity"; the "activities" of which said "enterprise" both having and maintaining affects on "interstate commerce" and "foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

(a) Beginning on, or about, October 23, 1994, via interstate telephonic communications between Fayette County, Kentucky, and Williamson County, Tennessee, Defendants Bishop and Rushing, acting in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or otherwise participated in commission of the two and distinctly separate "predicate acts" of "blackmail" (in violation of Title 18 U.S.C. § 873); **and** "extortion" (in violation of Title 18 U.S.C. § 875), **both** being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in...¶E-56 and FN67 of Akers' Memorandum; and which "predicate acts" resulted in injuries to Akers' businesses and property as detailed in ...¶¶125 & 127 of Akers' Memorandum.

COUNT NINETEEN - R.I.C.O. VIOLATIONS

In the course thereof the hereinabove "COUNTS ONE, TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN through EIGHTEEN', the Defendant Red Corn joined in those "chain conspiracies", "conspiracies', and "overt acts" in the furtherance and concealment thereof, on, or about, November 1, 1995, in Fayette County, Kentucky and/or Jessamine County, Kentucky; and acting both independently and in concert with those other Defendants named herein, with a common scheme and purpose, jointly devised, implemented, effectuated, and/or otherwise participated in and, thereby, committed two or more "predicate acts" constituting a "pattern" of "racketeering activity" as are enumerated in hereinafter subparagraph (a) through (d); having derived funds therefrom and attempting to derive additional funds therefrom for her use in the acquisition of, maintaining interests in, and/or participating in the conduct of the affairs of the "enterprise" known herein only as the "Association-in-fact" (comprised of all hereinabove "persons" named as Defendants herein, both jointly and severally, as herein "associated-in-fact") through such a "pattern" of "racketeering activity"; and the "activities" of which having affects on "interstate and/or foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

> (a) On, or about, November 6, 1995, in Fayette County, Kentucky, Defendant Red Corn collaborated with, unlawfully assisted, influenced, and/or directed Defendant Bishop in fraudulent testimony before the Fayette County [Kentucky] Grand Jury and, therefore, acted in concert with Bishop, with a common scheme and purpose, in effectuating and/or participating in commission of the "predicate acts" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512) and "influencing [a] juror generally" (in violation of TITLE 18 U.S.C. § 1503), **both** being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in...¶¶E-81 & E-82 with FN81 & FN82 thereto, respectively, of Akers' Memorandum; and which "predicate acts" ultimately

resulted in injuries to Akers in his businesses and in his as detailed in...¶¶ 125 & 127 of Akers' Memorandum;

(b) In about mid-May, 1995, in Fayette County, Kentucky, via telephonic communications to Pulaski County, Kentucky, the Defendant Red Corn committed the "predicate act" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512), thereby violating provisions of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner as set forth in...¶E-86.I(a) and FN85 thereto of Akers' Memorandum; and which said "predicate act" further resulted in injuries to Akers in his businesses and property as detailed in...¶127 of Akers' Memorandum;

(c) On May 20 through May 22, 1995, in Fayette County, Kentucky, the Defendant Red Corn committed numerous of the "predicate acts" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512) and "influencing [a] juror generally" (in violation of TITLE 18 U.S.C. § 1503), **both** being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in those manners set forth in...¶¶E-86.II through E-86.VIII and FN86 thru FN93, respectively, of Akers' Memorandum; and which additional "predicate acts" resulted in further injuries to Akers' businesses and property detailed in...¶127 of Akers' Memorandum; &

(d) On October 26 through 28, 1998, in Fayette County, Kentucky, the Defendant Red Corn committed numerous of the "predicate acts" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512) and "influencing [a] juror generally" (in violation of TITLE 18 U.S.C. § 1503), **both** being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in the manners set forth in...¶¶E-110.III through E-110.VII, E-110.IX, & E-110.X together with N106 through FN126 thereto, respectively, of Akers' Memorandum; and which such additional "predicate acts" resulted in injuries to Akers' businesses and his property as detailed in...¶127 of Akers' Memorandum.

COUNT TWENTY - R.I.C.O. VIOLATIONS

In the course thereof those hereinabove 'COUNTS ONE, TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN through

EIGHTEEN', the Defendant Overstreet joined in those "chain conspiracies', "conspiracies", and "overt acts" in the furtherance and concealment thereof on, or about, November 10, 1995, in Fayette County and/or Jessamine County, Kentucky, and acting both independently and in concert/consortium with those other Defendants named herein, with a common scheme and purpose, jointly devised, implemented, effectuated, and/or otherwise participated in and, thereby, committed two or more "predicate acts" constituting a "pattern" of "racketeering activity", as are enumerated in hereinafter subparagraphs (a) & (b); and, having derived funds therefrom in covert attempt to derive additional funds therefrom for her use in the acquisition of, maintaining interests in, and/or participating in the conduct of the affairs of the "enterprise" known as the "Association-in-fact" (comprised of all hereinabove "persons" named as Defendants herein, both jointly and severally, and herein "associated-in-fact") through such a "pattern" of "racketeering activity"; the "activities" of which "enterprise" maintaining affects on "interstate commerce" and/or "foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated as follows:

(a) On May 20 through May 22, 1995, in Fayette County, Kentucky, the Defendant Overstreet committed two or more of the "predicate acts" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512) and "influencing [a] juror generally" (in violation of TITLE 18 U.S.C. § 1503), **both** being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in those manners set forth in...¶¶E-86.II through E-86.VIII with FN86 thru FN93, respectively, of Akers' Memorandum; and which additional "predicate acts" resulted in further injuries to Akers' businesses and property as detailed in...¶127 of Akers' Memorandum; &

(b) On October 26 through 28, 1998, in Fayette County, Kentucky, the Defendant Overstreet committed two or more "predicate acts" of "tampering with a witness" (in violation of TITLE 18 U.S.C. § 1512) and "influencing [a] juror generally" (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C.

§§ 1961 & 1962, in the manners set forth in...¶¶E-110.III thru E-110.VII, E-110.IX, & E-110.X together with FN106 through FN126, respectively, of Akers' Memorandum; and which additional "predicate acts" resulted in further injuries to Akers' businesses and/or property as detailed in...¶127of Akers' Memorandum.

COUNT TWENTY-ONE - R.I.C.O. VIOLATIONS

On, or about, September 2, 1998, in Fayette County, Kentucky, and/or Williamson County, Tennessee, and/or via telephonic communications there between, Defendants Red Corn, Overstreet, and Williams, acting both independently and in consortium each with another, engaged in an intentional course of conduct directed at Akers, with common scheme and/or purpose, participated in and, thereby, committed two or more of the "predicate acts" constituting a "pattern" of "racketeering activity" as enumerated in hereinafter subparagraph (a) through (c); having derived funds therefrom, and attempting to derive additional funds therefrom, for use in the acquisition of and/or maintaining interests in, or otherwise participating in conduct of the affairs of the "enterprises" known as "Ernest W. Williams, Attorney-at-law" and the "Association-in-fact" (comprised of all those hereinabove "persons" named as Defendants herein, both jointly and severally, "associated-in-fact") through a "pattern" of such "racketeering activity"; the "activities" of each of the such "enterprises" having and maintaining affects on "interstate and/or foreign commerce" at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and each such "predicate act" depicted as "COUNT TWENTY-ONE(a), (b), & (c)" hereof being violations of TITLE 18 U.S.C. §§ 1961 & 1962. Those specific such "predicate acts" are enumerated hereinafter as follows:

(a) "Blackmail" (in violation of Title 18 U.S.C. §§ 2, 3, 5, & 873, ***inter alia***, and TITLE 18 U.S.C. §§ 1961 & 1962), in that manner as set forth in...¶¶E-106 & E-107 and FN106 thereto of Akers' Memorandum; and which "predicate act" further enhanced injuries to Akers in his businesses and property as detailed in...¶127 of Akers' Memorandum;

(b) "Extortion" (in violation of Title 18 U.S.C. §§ 2, 3, 5, & 875, ***inter alia***, and TITLE 18 U.S.C. §§ 1961 & 1962), in that manner as set forth in...¶¶E-106 & E-107 together with FN106 thereto of Akers' Memorandum; and which "predicate act" further enhanced injuries to Akers' businesses and property as detailed in...¶127 of Akers' Memorandum; &

(c) "Civil rights intimidation" (in violation of Tennessee Code Annotated 39-17-309 and, therefore, in violation of TITLE 18 U.S.C. §§ 1961 & 1962) in that manner as set forth in...¶¶E-106 & E-107 together with corresponding FN106 of Akers' Memorandum; and which such "predicate act" further enhanced injuries to Akers' businesses and property as detailed in...¶127 of Akers' Memorandum.

COUNT TWENTY-TWO - FINAL OVERT ACTS/COVER-UP

On, or about, March 30, 2000, in Fayette County, Kentucky, the Defendants Bishop, Fleming, Layne, and Witt continued in those "conspiracies" and "chain conspiracies" as detailed in hereinabove "COUNTS TWO, THREE, & FOUR"; and "overt acts" in the furtherance and concealment thereof as detailed in "COUNTS FIVE, SIX through TEN, & THIRTEEN"; and in the concealment of those "R.I.C.O. Violations" as detailed in hereinabove "COUNTS FIFTEEN through TWENTY-ONE", by conspiring to, participating in, and/or otherwise effectuating schemes to further deprive Akers of privileges and immunities secured by, ***inter alia***, Article I-Section 9 [Cl. 2], Article I-Section 10 [Cl. 1], Article IV-Section 2 [Cl. 1], and the First, Fourth, Fifth, Sixth, & Fourteenth Amendments of/to the Constitution of the United States of America and Article 1, Sections 8 & 10 of the Constitution of Tennessee; were joined in that "conspiracy" and "final overt acts" in furtherance thereof by Defendant Goodwine on April 13, 2000, in that manner set forth in...¶E-118 together with FN133 thereto, respectively, of Akers' Memorandum; and which "final overt acts" further enhanced injuries to Akers in his person, property, and businesses as detailed in...¶127 of Akers' Memorandum; all in violation of Title 42 U.S.C. §§ 1983 and 1985(3), ***inter alia***.

COUNT TWENTY-THREE - FINAL COVER-UP

On, or about, May 19, 2000, in Fayette County, Kentucky, the Defendants Bishop, Red Corn, and Overstreet, ***inter alia***, conspired to covertly "conceal" those "conspiracies" and "chain conspiracies" as detailed in hereinabove "COUNTS ONE, TWO, THREE, & FOUR"; "overt acts" in the furtherance thereof as detailed in "COUNTS FIVE, SIX through TEN, & THIRTEEN"; "unlawful imprisonment" of Akers as detailed in hereinabove "COUNTS ELEVEN & FOURTEEN"; **and** "R.I.C.O. Violations" detailed in hereinabove "COUNTS FIFTEEN through TWENTY-ONE", in that manner as detailed in...¶¶E-121 through E-124 with FN135 & FN136, respectively, of Akers' Memorandum; and which **additional** **"overt acts"** further enhanced the injuries to Akers in his person, property, and businesses as detailed in... ¶126 & 127 of Akers' Memorandum; all in violation of Title 42 U.S.C. §§ 1983 and 1985(3). [D.E. #1, pages 96 - 123]

In view of the foregoing, **it is incomprehensible** that the U.S. District Court for the Middle Tennessee District could have concluded in Its "MEMORANDUM", as entered September 18, 2001 [**"EXHIBIT USSC-09"** hereto], that Akers could receive a fair adjudication of this case **in any Court** in the Commonwealth of Kentucky or that **the "ends of justice" require** Akers to **ever** return to **any jurisdiction** in the Commonwealth of Kentucky – thereby placing himself in peril of **"more of the same" tyranny and oppression** of/by the herein Defendants-Respondents in violation of the Constitution and Laws of the United States.

ARGUMENT(S)

ARGUMENT I: **VENUE PROPERLY LIES WITH THE UNITED STATES DISTRICT COURT FOR MIDDLE TENNESSEE DISTRICT, AT NASHVILLE**

The District Court asserts that:

"...the only events alleged to have occurred in [the U. S. District of Middle Tennessee] are some telephone calls to and from [Akers] and his former wife, Defendant

> Carolyn Bishop, in Lexington, Kentucky, which may have violated a protective order and formed the basis for contempt charges, and [Akers] extradition in October 1995 from Tennessee to Kentucky after his arrest. All other events alleged in the Complaint occurred in the Eastern District of Kentucky, including the events that led to his arrests, his trial in state court, sentence, and incarceration. Therefore, based upon the record before the Court, the Court concludes that 'a substantial part of the events or omissions giving rise to the claim[s] occurred' in the Eastern District of Kentucky. Only a few tangential acts/events are alleged to have occurred in the Middle District of Tennessee. Consequently, the Court finds that venue does not lie in [U. S. District of Middle Tennessee] under 28 U.S.C. § 1391(b)(2)." [*id.*, page 3, lines 2 - 17, clarification added]

Obviously, the District Court has misconstrued the facts – perhaps in the same manner as did the Hon. Henry R. Wilhoit, Chief Judge of the United States District Court for the Eastern District of Kentucky – due to acceptance of the Defendants'-Respondents' fraudulent misrepresentations [e.g., "**EXHIBIT USSC-10**"hereto at FN6, page 8 thereof]

At the time Akers migrated back to Tennessee on September 23, 1994, there were no charges whatsoever against him within Kentucky **or elsewhere**. ["**EXHIBIT USSC-02**", D.E. #3, EXHIBIT "V" thereof] and none could have reasonably been anticipated. **All of the subsequent "criminal charges" were the proximate result of interstate "events"**, the effect of which was extortion, blackmail, kidnaping and/or fraudulent extradition of Akers **within the State of Tennessee** for the express purposes of the Defendants'-Appellants' violations of Akers' privileges and immunities as secured by the United States Constitution; and for which remedies are provided for pursuant to provisions of TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3) – **precisely as Akers is has attempted to do** as has been encouraged by the "Congressional purpose" set out in "TITLE 42 U.S.C. § 1988(a) Applicability of statutory and common law", i.e.,

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in their civil rights, and their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect;"[5]

The District Court further asserts that:

"The only Defendant who resides, is found, has an agent, or conducts his affairs in [the Federal District of Middle Tennessee] is Ernest Williams"; and that: "[a]pparently, [Akers] does not dispute that venue cannot lie in [U. S. District Court for Middle Tennessee-Nashville Division] as to his RICO claims against the other defendants based on 18 U.S.C. § 1965(a). Giving Plaintiff's allegations the liberal construction afforded pro se litigants, however, [Akers] maintains that venue exists here as to the remaining Defendants pursuant to 18 U.S.C. § 1965(b). As expressly stated in the statute, before a district court can summons parties from another district to answer a RICO claim, it must find that 'the

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[5] See also: **Collins v. Chandler Unified School Dist., C.A.9 (Ariz.) 1981, 644 F.2d 759, certiorari denied 102 S.Ct. 322, 454 U.S. 863, 70 L.Ed. 2d 163**, i.e., "This section is broad and unequivocal and must be liberally construed to achieve congressional purpose of encouraging compliance with and enforcement of civil rights laws."; **Dennis v. Chang, C.A.9 (Hawaii) 1980, 611 F.2d 1302**, i.e., "This section must be liberally construed to achieve congressional purpose to encourage compliance with and enforcement of civil rights laws."; **Donaldson v. O'Connor, N.D.Fla 1978, 454 F.Supp. 311**, i.e., "This section is to be construed to fulfill congressional purpose of encouraging private litigation to enforce civil rights"; & **Johnson v. Summer, N.D. Miss.1980, 488 F.Supp. 83**, i.e., "This section, providing for attorney fees in civil cases, is to be broadly and liberally construed to achieve its intended purpose to compensate counsel who represents prevailing litigants on civil rights claims and to encourage individuals to seek judicial relief, particularly those who might not otherwise attempt to vindicate their rights, and **this is particularly true where individual is faced with opposition from state, with entire resources of state government supporting litigation**." (emph. added)

ends of justice' so require. What is required to meet "the ends of justice" requirement is not crystal clear, but, at a minimum, the Court must determine that there is no other district which has personal jurisdiction and venue over all members of the alleged RICO conspiracy. ...The Second Circuit, in discussing an assertion of personal jurisdiction based upon 18 U.S.C. § 1965(b), stated as follows:

> 'This jurisdiction is not automatic but requires a showing that 'the ends of justice' so require. **There is no impediment to prosecution of a civil RICO action in a court foreign to some defendants if it is necessary**...'"[6] [see "**EXHIBIT USSC-09**", page 4, lines 2-16; & page 5, lines 1-14, emphasis added]

Again, the Court errs. Akers certainly does "dispute that venue cannot lie in [U. S. District of Middle Tennessee] as to his RICO claims against the other defendants" and, as bases therefor, relies upon the very same TITLE 18 U.S.C. § 1965(b) which the Court cites.[6] Moreover, Defendant-Respondent Allen I. Rushing now resides in Pennsylvania and **there is no "other district which has both personal jurisdiction and venue over all members of the alleged RICO conspiracy"**. It just cannot be disputed that the **United States District Court for the Middle Tennessee District, at Nashville, is the only proper venue** for Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)".

---

[6] See also: **Cooper v. Molko, D.C.Cal., 512 FR.Supp. 563 (1981)**, i.e., "In action by member of religious group against his parents, **venue was proper in Northern District of California where complaint alleged that parents came that district, participated in conspiracy** to abduct their son, and held him in motel in district for five days for deprogramming" (emphasis added); & **Jones v. Bales, D.C.Ga. 58 F.R.D. 453, affirmed 480 F.3d (1972)**, i.e. "**Where action is based on an alleged conspiracy within this section** relating to conspiracies for purpose of depriving any class of persons of equal protection of the laws, **the action may be brought in the district where any overt act occurred**." (emphasis added)

ARGUMENT II: **"ORDER" TRANSFERRING VENUE FOR CASE TO EASTERN DISTRICT OF KENTUCKY IS "COLLATERAL TO MERITS" OF THE CASE**

Inasmuch as those factual allegations contained within the hereinabove "STATEMENT OF THE CASE ***SUB JUDICE***" [supra, pages 4 through 21 hereof] will speak for themselves and it is not anticipated that even the Defendants-Respondents will contest this issue, Akers will not waste valuable time and effort in addressing it further. Suffice it to say that the "ORDER" issued by Hon. Robert L. Echols, Chief Judge for the United States District Court for the Middle Tennessee District, on September 18, 2001, is "collateral to the merits" of this case.

ARGUMENT III: **TRANSFER OF CASE TO UNITED STATES DISTRICT COURT FOR EASTERN DISTRICT OF KENTUCKY WILL RESULT IN IRREPARABLE DAMAGE TO AKERS**

The list of "lay witnesses" required by Akers' at trial of this case will include residents of four (4) separate and distinct Federal Districts within Kentucky; two (2) separate and distinct Federal Districts within Tennessee; and two (2) separate and distinct Federal Districts within Indiana. All "expert witnesses" required by Akers' at trial are residents of the Federal District of Middle Tennessee. Fearing reprisal by the herein Defendants-Appellees as does Akers, all "lay witnesses" who are residents of Kentucky and Indiana have made it clear that they prefer to testify in the Federal District of Middle Tennessee, at Nashville, and arrange for travel and/or per diem costs at their own expense. The yet undetermined number of lay witnesses who are residents of Middle Tennessee, and the only witnesses who can provide proof as to the "whereabouts" and "demeanor" of Akers during the time period encompassing his fraudulent "First Degree Stalking" conviction, cannot be required to travel in excess of one hundred (100) miles from the venue and it

would be unfeasible for the U. S. District Court for the Eastern District of Kentucky to compel their appearance in Lexington, Kentucky. All nine (9) of Akers' expert witnesses are residents, and maintain offices in Middle Tennessee. Akers just, simply, no longer have the resources to compensate those expert witnesses for travel time, travel expense, and per diem expenses required for testimony in U. S. District Court for the Eastern District of Kentucky at Lexington and there are no expert witnesses within Central Kentucky who can competently testify with respect to the issues raised in Akers' claims. Moreover, **every witness even conceivably required by these Defendants have already testified with respect to every conceivable matter** in Akers' numerous trials and/or hearings within Fayette [Kentucky] District & Circuit Courts. All such testimony is mechanically- recorded on audiotapes and/or videotapes and can be utilized by the Defendants-Appellees, to whatever extent relevant and admissible, pursuant to Rule 804 of the Federal Rules of Evidence. **Akers has no such luxury**.

This Honorable Court is asked to consider the following likely scenario in the event the "ORDER" of transfer issued by United States District Court for the Middle District of Tennessee is allowed to stand:

> (a) Akers', **who is not an attorney** and can no longer afford an attorney after having all his resources depleted in defense of the fraudulent charges in Kentucky and subsequent incarceration in Kentucky, is compelled to re-enter the jurisdiction of the Defendants-Respondents for filings, depositions, pre-trial hearings, and, ultimately, for trial;
>
> (b) The herein Defendants-Respondents, realizing they are in a "no win" situation, then file **additional fraudulent charges** against Akers pursuant to the yet outstanding, **and unconstitutional**, "Domestic Violence Order" as detailed in ¶E-118 of Akers' Memorandum;
>
> (c) Akers is then, **yet again**, imprisoned within Kentucky for "God only knows" how long;
>
> (d) Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983;

& TITLE 42 U.S.C. § 1985(3)" is then, subsequently, "DISMISSED FOR FAILURE TO PROSECUTE"; &

(e) The Defendants-Respondents escape liability and exposure of their pervasive corruption.

These Defendants-Respondents have committed equally-dastardly acts in May through July, 1994; October through December, 1995; and May, 1994, through July, 2000, and **not even the Federal Courts can guarantee that the Defendants will not do so again** in order to prevent this case from going forward – thereby avoiding exposure of the pervasive corruption within their ranks.

Truly, **the "ends of justice" require** venue for Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" to remain in the United States District Court for the Middle District of Tennessee, at Nashville.

ARGUMENT IV: ISSUES RESPECTING TRANSFER OF CASE TO THE EASTERN DISTRICT OF KENTUCKY, AT LEXINGTON, ARE "TOO IMPORTANT" TO "BE DEFERRED UNTIL THE WHOLE CASE IS ADJUDICATED"

Akers hereby re-states and reiterates the arguments as set forth within the hereinabove "ARGUMENT III: TRANSFER OF CASE TO EASTERN DISTRICT OF KENTUCKY AT LEXINGTON WILL RESULT IN IRREPARABLE DAMAGE TO AKERS" the same as if set forth herein in their entirety.

ARGUMENT V: "ENDS OF JUSTICE" REQUIRE VENUE TO REMAIN IN UNITED STATES DISTRICT COURT FOR MIDDLE TENNESSEE DISTRICT-NASHVILLE DIVISION

The District Court asserts that:

"Based upon the record, the Court finds that the 'ends of justice' do not require that the...defendants be haled before this court from other districts. First, the entire case can be litigated in the Eastern District of Kentucky. As noted previously, venue is proper in that district and said District Court has personal jurisdiction over every Defendant under Section 1965. More specifically, ...Defendant Williams who lives in Franklin, Tennessee, represented [Akers] in [the Eastern District of Kentucky] during his trial there.[7] See Int'l Shoe Co. v. Washington, 326 U. S. 310, 316 (1945) [i.e.,]

> '...personal jurisdiction requires 'certain minimum contacts' with the forum state and 'that the maintenance of the suit...does not offend traditional notions of fair play and substantial justice.'" [*id.*, page 5, lines 15 -30]

In response, Akers hereby re-states and reiterates the arguments set forth within hereinabove "ARGUMENT III: TRANSFER OF CASE TO EASTERN DISTRICT OF KENTUCKY AT LEXINGTON WILL RESULT IN IRREPARABLE DAMAGE TO AKERS" the same as if set forth herein in their entirety. Additionally, Akers would point out that he has made repeated efforts within his various pleadings within the United States District Court for the Middle District of Tennessee, at Nashville, to alert that Court of the ominous perils to Akers if **ever returning to anywhere** within the jurisdiction of the herein Defendants-Appellees, e.g.,

---

[7] **This assertion is just, simply, false** and is apparently the product of the fraudulent misrepresentations of herein defense counsels, Robert L. Estes [see D.E. #35, page 7, lines 12 - 14] and Kentucky Assistant Attorney General D. Brent Irvin [see D.E. #38, ¶ 5, lines 1 - 3; & D.E. #39, page 11, lines 12 - 14]. Williams was retained by Akers for the **limited purpose detailed in ¶E-106 of Akers' Memorandum.** Williams **has never filed an "entry of appearance" on behalf of Akers; Williams has never appeared in any Court proceeding on behalf of Akers; & Williams has never represented Akers in any "trial".**

"The Kentucky Defendants' arguments with respect to transfer of this case to Central Kentucky are nothing more than a ploy to lure Akers back to the jurisdiction of the Defendants, thereby subjecting him to "more of the same" oppression and tyranny which gave rise to Akers' claims herein and to facilitate additional violations of Title 18 U.S.C. § 1961, *et seq.*, and Title 42 U.S.C. §§ 1983 & 1985 by those Defendants." ["**EXHIBIT USSC-02**" hereto, D.E.#68, ¶2(A)(iv), page 5 thereof; & "**EXHIBIT USSC-10**" hereto, at ¶2(B)(I)(iv), pages 5 & 6]

CONCLUSION

Finally, the District Court asserts as follows:

"...even if the Court permitted Plaintiff to litigate the RICO claims [in U. S. District Court for the Middle Tennessee District] venue would still be improper as to [Akers'] Section 1983 & Section 1985 claims because a substantial part of the events giving rise to [Akers'] claims did not occur in [the Federal District of Middle Tennessee][8] (28 U.S.C. § 1391(b)(2)) and Title 18 U.S.C. § 1965(a) applies only to the RICO claims; not the 1983/ Section 1985. Such a course of action would not promote judicial economy and would delay and add additional hardships to the parties.[9] Therefore, for the reasons stated, the Court concludes that venue does not properly lie in [the U. S. District of Middle Tennessee] for [Akers'] RICO claims." [see "**EXHIBIT USSC-09**" hereto, page 6, lines 4 - 17, clarification & emphasis added]

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[8] Once again, the Court errs [see hereinabove FN5, supra, page 27 hereof].

[9] **It is astounding that the Honorable Chief Judge for United States District Court for the Middle Tennessee District-Nashville Division would now be concerned about "hardships" to the herein Defendants-Respondents in view of the history of this case, and with no regard to further hardships upon Akers and his witnesses.**

"**For the foregoing reasons**, Defendants' Motions to Transfer will be **GRANTED**, and this case **will be TRANSFERRED** to the United States District Court for the Eastern District of Kentucky. Defendants' Motions to Dismiss will be DENIED AS MOOT.

An appropriate order will be entered." [*id.*, page 7, lines 5 through 9, emphasis added]

Clearly, Akers recognizes that the herein case of "JAMES G. AKERS v. CAROLYN P. BISHOP, ***et al***" is a "hot potato" which no one wishes to even pick up – much less hold onto and deal with. Nonetheless, **that is precisely what the Constitution and Laws of the United States of America require**. That is all Akers is asking the Federal Courts to do in this case – **to enforce the Constitution and Laws of the United States of America** and allow "due process of law" to follow its designed course.

WHEREFORE, the Plaintiff-Petitioner, James G. Akers, asks and prays of this Honorable Court to reverse the "ORDER" transferring this action to United States District Court for the Eastern District of Kentucky, as entered on September 18, 2001, by the Hon. Robert L. Echols, Chief Judge for the United States District for the Middle Tennessee District-Nashville Division, and remand with instructions that "venue" shall remain therein in order that Akers may proceed without further hindrance, threat, hardship, and/or undue prejudice in prosecution of his "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" and the "ends of justice" may be effectively served.

Respectfully submitted,

JAMES G. AKERS, Plaintiff-Petitioner
Post Office Box 3648
Brentwood, Tennessee 37024
Telephone: 615/834-2843

CERTIFICATION OF COMPLIANCE

PLAINTIFF-PETITIONER, James G. Akers, **without counsel**, hereby certifies that the foregoing "PETITION FOR WRIT OF CERTIORARI" fully complies with FRAP 32(a)(7)(C) in conjunction with United States Supreme Court Rule 14.

JAMES G. AKERS, Plaintiff-Petitioner

STATE OF TENNESSEE)
)
) s/s
)
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove James G. Akers has personally appeared before me on this, the 23rd day of April, 2002, has acknowledged the foregoing instrument, and subscribed his signature thereto in my presence.

Teresa Johns
NOTARY PUBLIC Tennessee-at-large

My Commission Expires: 3/26/2005

APPENDIX

INDEX TO EXHIBITS

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USSC-01	Certified Copy, "General Docket", U. S. Court of Appeals for the Sixth Circuit, Docket Number 01-6243, as of 03/28/2002	1
USSC-02	Certified Copy, "Civil Docket", U. S. District Court for the Middle District of Tennessee (Nashville), Case Number 3:00cv1142, as of 03/29/2002	15
USSC-03	Copy of letter from Plaintiff-Petitioner, James G. Akers, to all Counsel-of-Record for Defendants-Respondents re: possible resolution of the case (w/letter & copy to Mr. Roger Milam, Clerk for U. S. District Court for the Middle District of Tennessee, Nashville Division), dated 03/14/2002	35
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CERTIFICATION OF COMPLIANCE & AUTHENTICITY

THE PLAINTIFF-PETITIONER, James G. Akers, **without counsel**, in strict accordance with TITLE 28 U.S.C. § 1654, hereby certifies that: (1) EXHIBITS "USSC-01" through "USSC-11" as bound herewith and indexed above, are true, accurate, and complete copies of the same documents contained within my records with respect to "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" as filed in United States District Court for the Middle Tennessee District-Nashville Division, on November 21, 2000 [Case No. 3:00-1142] and subsequent "APPEAL" to the U. S. Court of Appeals for the Sixth Circuit as docketed therein on October 16, 2001 [Case No. 01-6243]; (2) that I personally supervised reproduction of the same in strict accordance with U. S. Supreme Court Rule 33.2; & (3) all such "EXHIBITS" are included herein only for that purpose set forth in United States Supreme Court Rule 14.1(f) & (i).

JAMES G. AKERS, Plaintiff-Petitioner

STATE OF TENNESSEE)
) s/s
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove James G. Akers has personally appeared before me on this, the 23rd day of April, 2002, has acknowledged the foregoing instrument and subscribed his signature thereto in my presence.

NOTARY PUBLIC, Tennessee-at-large

My Commission Expires: 3/26/2005

EXHIBIT "USSC-01" 1

GENERAL DOCKET
Sixth Circuit Court of Appeals

01-6243 01-6243

Court of Appeals Docket #: 01-6243 Filed: 10/16/01
Nsuit: 3440 Civil Rights: Other
Akers v. Bishop, et al

Appeal from: Middle District of Tennessee at Nashville

Case Type information:
1) Civil
2) private
3) federal question

Lower court information:

District: 0650-3 : 00-01142
Trial Judge: Robert L. Echols, Chief District Judge
Date Filed: 11/21/00
Date order/judgement: 9/18/01
Date NOA filed: 9/21/01

Fee status: paid

Prior cases:
None
Current cases:
None

01-6243 Akers v. Bishop, et al

JAMES G. AKERS Plaintiff - Appellant	James G. Akers [NTC pro] P.O. Box 3648 Brentwood, TN 37024
v.	
CAROLYN P. BISHOP Defendant - Appellee	Leslie Rosenbaum FTS 259-1324 606-259-1321 [COR LD NTC ret] Rosenbaum & Rosenbaum 201 W. Short Street Suite 300 Lexington Bldg. Lexington, KY 40507-1289 Leonard F. Pogue, III 615-255-0441 [NTC ret] Lewis, King, Krieg, Waldrop & Catron 424 Church Street Ninth Floor Suntrust Center, P.O. Box 198615 Nashville, TN 37219-8615
DORIS FLEMING Defendant - Appellee	David B. Scott 615-256-9999 [COR LD NTC ret] Ortale, Kelley, Herbert & Crawford 200 Fourth Avenue, N. Third Floor Noel Place, P.O. Box 198985 Nashville, TN 37219-8985

ALLEN I. RUSHING Defendant - Appellee	William W. Allen FTS 233-4269 606-255-2344 [COR LD NTC ret] Gess, Mattingly & Atchison 201 W. Short Street Lexington, KY 40507
CBT Does 1-40, Known only as that group of persons at Central Bank & Trust Company, Inc., and "associated in-fact" Defendant - Appellee	
TODD M. LAYNE Defendant - Appellee	Robert L. Estes FTS 256-8386

	615-244-6538 [COR LD NTC ret] Stewart, Estes & Donnell 424 Church Street 14th Floor Suntrust Center Nashville, TN 37219-2392
DONALD SHANNON Defendant - Appellee	Robert L. Estes (See above) [Cor LD NTC ret]
JERRY L. KELLY Defendant - Appellee	Mark S. Fenzel 502-584-1135 [COR ret] Augustus S. Herbert FTS 561-0442 502-584-1135

[COR LD NTC ret]
Middleton & Reutlinger
401 S. Fourth Avenue
Suite 2500 Brown
Williamson Tower
Louisville, KY 40202

Wayne L. Robbins, Jr.
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(NTC ret)
Gullett, Sanford, Robinson
& Martin
230 Fourth Avenue
Third Floor, P.O. Box 198888
Nashville, TN 37219-8888

SCC DOES 1-50, Known only as
that group of individual persons
at the Southland Christian Church
of Lexington, Inc., "associated-in-fact"
Defendant - Appellee

JOHN J. VAUGHN, M.D.
Defendant - Appellee

William W. Allen
(See above)
[COR LD NTC ret]

THOMAS D. CLARK
Defendant - Appellee

D. Brent Irvin, Asst. Atty.
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FTS 564-2894
502-696-5609
[COR LD NTC ret]
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KATHERINE WITT

Bennett E. Bayer
859-255-2424
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Joseph R. Wheeler
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[NTC ret]
Cornelius & Collins
511 Union Street
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Center, P.O. Box 190695
Nashville, TN 37219-0695

FCS DOES 1-30, Known only as a group of persons at the Fayette, Kentucky County Sheriff's Office and "associated in-fact"
Defendant - Appellee

PAMELA MILLER
Defendant - Appellee

Edward W. Gardner
FTS 258-3538
859-258-3500
[NTC ret]
Lexington-Fayette Urban
County Government
Department of Law
200 E. Main Street
11th Floor
Lexington, KY 40507

LFG DOES 1-60, Know only as that group of individual persons at the Lexington-Fayette, (Kentucky)Urban County

Theresa L. Holmes
FTS 258-3538
606-258-3500
[COR ret]

Government and "associated in-fact" Defendant - Appellee	Tracy W. Jones FTS 258-3538 859-258-3500 [COR LD NTC ret] Lexington-Fayette Urban County Government Department of Law 200 E. Main Street 11th Floor Lexington, KY 40507
LOU A. RED CORN	D. Brent Irvin, Asst. Atty General

Docket as of March 28, 2002 11:35 AM Page 4

	(See above) [COR LD NTC ret]
CAO DOES 1-20, known only as a group of persons at the Office of the Commonwealth Attorney for Kentucky, Twenty-Second (22nd) Judicial District and "associated in-fact" Defendant - Appellee	
FCC DOES 1-10, Known only as a group of persons at the Office of the Fayette, Kentucky Circuit Court Clerk "associated-in-fact" Defendant - Appellee	
REBECCA M. OVERSTREET Defendant - Appellee	D. Brent Irvin, Asst. Atty General (See above) [COR LD NTC ret)

CINDY G. SWARTZ Defendant -Appellee	D. Brent Irvin, Asst. Atty General (See above) [COR LD NTC ret]
ERNEST W. WILLIAMS Defendant - Appellee	Darrell G. Townsend FTS 244-3518 615-244-3370 [COR LD NTC ret] Neil M. McIntire FTS 244-3518 615-244-3370 [COR ret] Howell & Fisher 300 James Robertson Pkwy Court Square Building Nashville, TN 37201-1107
TODD D. FERGUSON Defendant - Appellee	D. Brent Irvin, Asst. Atty General (See above) [COR LD NTC ret]
PAMELA D. GOODWINE Defendant - Appellee	D. Brent Irvin, Asst. Atty General (See above) [COR LD NTC ret]
THE ASSOCIATION-IN-FACT Defendant - Appellee	

8

JAMES G. AKERS

Plaintiff - Appellant

v.

CAROLYN P. BISHOP; DORIS FLEMING; ALLEN I. RUSHING, CBT DOES 1-40, Known only as that group of persons at Central Bank & Trust Company, Inc., and "associated in-fact"; TODD M, LAYNE; DONALD SHANNON; JERRY L. KELLY; SCC DOES 1-50, Known only as that group of individual persons at the Southland Christian Church of Lexington, Inc. an "associated in-fact"; JOHN J. VAUGHN, M.D.; THOMAS D. CLARK; KATHERINE WITT; FCS DOES 1-30, Known only as a group of persons at the Fayette, Kentucky County Sheriff's office and "associated in-fact"; PAMELA MILLER; LFG DOES 1-60, Known only as that group of individual persons at the Lexington-Fayette, (Kentucky) Urban County Government and "associated in-fact"; LOU A. RED CORN; COA DOES 1-20, Known only as a group of persons at the office of the Commonwealth Attorney for Kentucky, Twenty-Second (22nd) Judicial District and "associated in-fact"; FCC DOES 1-10, Known only as a group of persons at the office of the Fayette, Kentucky Circuit Court Cler "associated in-fact"; REBECCA M. OVERSTREET; CINDY G. SWARTZ; ERNEST W. WILLIAMS; TODD D. FERGUSON; PAMELA D. GOODWINE; THE ASSOCIATION-IN-FACT

Defendants - Appellees

10/16/01	Civil Case Docketed. Notice filed by Appellant James G. Akers. Transcript needed: n ⌂ (ds)
10/16/01	BRIEFING LETTER SENT setting pro se briefing schedule: appellant brief due 11/13/01; appellee brief due 12/11/01; reply brief due 12/26/01; appendix due 01/02/02. . (ds)
10/23/01	Case referred to Staff Attorney Office. ☺ (mmm)
10/24/01	APPEARANCE filed by Attorney Augustus S. Herbert for Appellee Jerry L. Kelly [01-6243] (ds)
10/24/01	APPEARANCE filed by Attorney Mark S. Fenzel for Appellee Jerry L. Kelly [01-6243] (ds)
10/24/01	Appellee MOTION filed to dismiss case for lack of jurisdiction. Motion filed by Augustus S. Herbert for Appellee Jerry L. Kelly . Certificate of service date 10/23/01. [01-6243] (ds)
10/29/01	APPEARANCE filed by Attorney Leslie Rosenbaum for Appellee Carolyn P. Bishop [01-6243] (lak)
10/30/01	APPEARANCE filed by Attorney William W. Allen for Appellee John J. Vaughn [01-6243] (lak)
10/31/01	Appellee MOTION filed to dismiss case for lack of jurisdiction. Motion filed by Leslie Rosenbaum for Appellee Carolyn P. Bishop. Certificate of Service date 10/30/01. [01-6243] (ds)
11/01/01	Appellant RESPONSE in opposition filed regarding a motion to dismiss case for lack of jurisdiction [2444291-1]; previously filed by Augustus S. Herbert. Response from Appellant James G. Akers. Certificate of service date 10/30/01. [01-6243] (ds)

11/02/01 APPEARANCE filed by Attorney D. Brent Irvin for Appellees Pamela D. Goodwine, Todd D. Ferguson, Cindy G. Schwartz, Rebecca M. Overstreet, Lou A. Red Corn, Thomas D. Clark [01-6243] (ds)

11/02/01 Appellee MOTION filed to dismiss case for lack of jurisdiction. Motion filed by D. Brent Irvin for Appellees Pamela D. Goodwine, Todd D. Ferguson, Cindy G. Swartz, Rebecca M. Overstreet, Lou A. Red Corn, Thomas D. Clark. Certificate of service date 11/01/01. [01-6243] (ds)

11/06/01 APPEARANCE filed by Attorney Bennett E. Bayer for Appellee Katherine Witt. [01-6243] (lak)

11/07/02 Appellee MOTION filed to dismiss case for lack of jurisdiction. Motion filed by Bennett E. Bayer for Appellee Katherine Witt. Certificate of service date 11/06/01. [01-6243] (ds)

11/08/01 APPEARANCE filed by Attorney Neil M. McIntire for Appellee Ernest W. Williams, Darrell G. Townsend for Appellee Ernest W. Williams. [01-6243] (lak)

11/08/01 Appellee MOTION filed to dismiss case for lack of jurisdiction. Motion filed by David B. Scott for Appellee Doris Fleming. Certificate of service date 11/06/01. [01-6243] (ds)

11/09/01 Appellant RESPONSE in opposition filed regarding a motion to dismiss case for lack of jurisdiction [2449055-1]; previously filed by Leslie

Rosenbaum, a motion to dismiss case for lack of jurisdiction [2444291-1]; previously filed by Augustus S. Herbert. Response from Appellant James G. Akers. Certificate of service date 11/08/01. [01-6243] (ds)

11/13/01 APPEARANCE filed by Attorney David B. Scott for Appellee Doris Fleming [01-6243] (lak)

11/13/01 Appellant RESPONSE in opposition filed regarding a motion to dismiss case for lack of jurisdiction [2450873-1]; previously filed by D. Brent Irvin. Response from Appellant James G. Akers. Certificate of service date 11/10/01. [01-6243] (ds)

11/13/01 BRIEF filed by Appellant James G. Akers. Copies: 7. Certificate of service 11/12/01 Number of Pages: 34. [01-6243] (lak)

11/19/01 APPEARANCE filed by Attorney Robert L. Estes for Appellees Donald Shannon, Todd M. Layne [01-6243] (ds)

11/19/01 Appellee MOTION filed to dismiss case for lack of jurisdiction. Motion filed by Robert L. Estes for Appellees Donald Shannon, Todd M. Layne. Certificate of service 11/15/01 [01-6243] (ds)

11/20/01 APPEARANCE filed by Attorney William W. Allen for Appellee Allen I. Rushing [01-6243] (ds)

11/20/01 Appellee Motion filed to dismiss case for lack of jurisdiction. Motion filed by William W. Allen for Appellees John J. Vaughn, Allen I. Rushing. Certificate of service date 11/19/01. [01-6243] (ds)

12

11/27/01 LETTER SENT by ds to hold case in abeyance pending resolution of a jurisdictional issue [01-6243] (ds)

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11/27/01 Appellee MOTION filed to stay proceedings pending motions to dismiss filed by D. Brent Irvin for Appellees. Certificate of service date 11/26/01. [01-6243] (yh)

11/28/01 Appellant RESPONSE opposition filed regarding a motion to stay proceedings pending the motions to dismiss previously filed by D. Brent Irvin. Response from Appellant James G. Akers. Certificate service date 11/26/01. [01-6243] (yh)

12/10/01 Appellant MOTION filed for reconsideration of ruling to hold briefing in abeyance pending ruling on motions to dismiss for lack of jurisdiction. [2471576-1]. Motion filed by Appellant James G. Akers. Certificate of service date 12/7/01. [01-6243] (ds)

12/12/01 APPEARANCE filed by Attorney Tracy W. Jones for Appellee LFG DOES 1-60 [01-6243] (ds)

12/12/01 APPEARANCE filed by Attorney Theresa L. Holmes for Appellee LFG DOES 1-60 (ds)

12/17/01 Appellee MOTION filed to dismiss case for lack of jurisdiction. Motion filed by Neil M. McIntire for Appellee Ernest W. Williams. Certificate of service date 12/13/01. [01-6243] (ds)

12/19/01 Appellee RESPONSE in opposition filed regarding a motion for miscellaneous relief [2471576-1]; previously filed by James G. Akers

Response from Augustus S. Herbert for Appellee Jerry L. Kelly. Certificate of service date 12/18/01 [01-6243] (ds)

12/26/01 Appellant RESPONSE filed. Response from Appellant James G. Akers. Certificate of service date 12/21/01. [01-6243] (ds)

12/27/01 Appellant RESPONSE in opposition filed regarding a motion to dismiss case for lack of jurisdiction [2474589-1]; previously filed by Neil M. McIntire. Response from Appellant James G. Akers. Certificate of service date 12/24/01 (ds)

01/24/02 ORDER filed: DISMISSED, decision not for publication pursuant to local rule 28 (g) [01-6243]; declaring as moot the motion for reconsideration miscellaneous relief [2471576-1] filed by James G. Akers [01-6243]. Cornelia G. Kennedy, Circuit Judge, Martha C. Daughtrey, Circuit Judge, Robert H. Bell, Chief District Judge. (ds)

02/13/02 Appellant MOTION filed to stay mandate. Motion filed by Appellant James G. Akers. Certificate of service date 2/11/02 [01-6243] (ds)

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02/21/01 ORDER filed denying motion to stay mandate [2503891-1] filed by James G. Akers [01-6243]. Cornelia G. Kennedy, Circuit Judge, Martha C. Daughtrey, Circuit Judge, Robert H. Bell, District Judge. (ds)

03/04/02 MANDATE ISSUED with no cost taxed (mcp)

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United States Court of Appeals For The Sixth Circuit

I, Leonard Green, Clerk of the United States Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of

The Docket Sheet as of March 28, 2002

in the case of

James G. Akers,
Plaintiff - Appellant

v.

Carolyn P. Bishop, et al.,
Defendant - Appellees

No. 01-6243, as the same remains upon the files and records of said United States Court of Appeals for the Sixth Circuit, and of the whole thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 28th of March, A.D. 2002

United States
For the
Sixth Circuit
Court of Appeals

Leonard Green
Clerk of the United State Court
Of Appeals for the Sixth Circuit

s/ Ken Loomis
Deputy Clerk

[END OF DOCUMENT]

EXHIBIT "USSC-02" 15

Termed 50BD

U. S. District Court
MIDDLE DISTRICT OF TENNESSEE (Nashville)

CIVIL DOCKET FOR CASE #: 00-CV-1124

Akers v. Bishop, et al
Assigned to: Judge Robert L. Echols
Demand: $0,000
Lead Docket: None
Dkt# in other court: None

Filed: 11/21/00
Jury demand: Plaintiff
Nature of Suit: 440
Jurisdiction: Federal Question

Cause: 42:1983 Civil Rights Act

JAMES G. AKERS
pltf

James G. Akers
[COR LD NTC] [PRO SE]
P. O. Box 3648
Brentwood, TN 37024

v.

CAROLYN P. BISHOP
deft

Leonard F. Pogue, III
[COR LD NTC]
Lewis, King, Krieg, Waldrop & Catron, P.C.
P. O. Box 198615
201 Fourth Ave, N., Ste 1500
Nashville, TN 37219-8615
(615) 259-1366

Leslie Rosenbaum
[COR LD NTC]
Rosenbaum & Rosenbaum
300 Lexington Building
201 W Short Street
Lexington, KY 40507
(859) 259-1321

DORIS FLEMING

David B. Scott

deft

[COR LD NTC]
Ortale, Kelley, Herbert &
Crawford
P. O. Box 198985
200 Fourth Ave., N 3rd Floor
Nashville, TN 37219-8985
(615) 256-9999

ATTEST & CERTIFY
A TRUE COPY
Clerk
U.S. District Court
Middle District of Tennessee
By: s/Frances C. Matlock
Deputy Clerk

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ALLEN I. RUSHING
deft

Allen I. Rushing
[COR LD NTC] [PRO SE]
112 Oak Ridge Lane
Dallastown, PA 17313

CBT DOES 1-40, Known only
as that group of persons at
Central Bank & Trust Company,
Inc., and "associated in-fact"
deft

TODD M. LAYNE
deft

Robert Larry Estes
[COR LD NTC]
Mink & blair
P. O. Box 190584
219 Second Ave., N.
Suite 400
Nashville, TN 37219-0584

DONALD SHANNON
deft

Robert Larry Estes
(See above)
[COR LD NTC]

JERRY L. KELLY
deft

Wayne Lindsey Robbins, Jr.
[COR LD NTC]
Gullett, Sanford, Robinson & Martin
P. O. Box 198888
230 Fourth Ave., N
Third Floor
Nashville, TN 37219-8888
(615) 244-4994

Jerry L. Kelly
[COR LD NTC] (PRO SE)
3253 Blenheim Way
Lexington, KY 40503

SCC DOES 1-50, Known only as
that group of individual persons
at the Southland Christian Church
of Lexington, Inc., and "associated-in-fact"
deft

JOHN J. VAUGHN, M.D.
deft

William W. Allen
[COR LD NTC]

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50BD

Gess, Mattingly Atchison
201 W Short Street
Lexington, KY 40507-1269
(606) 255-2344

THOMAS D. CLARK
deft

D. Brent Irvin
[COR LD NTC]
Office of the Attorney General
Capitol Building
Suite 118
700 Capitol Avenue
Frankfort, KY 40601
(502) 564-8300

KATHERINE WITT
deft

Joseph R. Wheeler
[COR LD NTC]
Cornelius & Collins, LLP
P. O. Box 190695
511 Union Street
Suite 1500
Nashville, TN 37219-0695
(615) 244-1440

Bennett E. Bayer
[COR LD NTC]
Landrum & Shouse
P. O. Box 951
Lexington, KY 40588-0951
(859) 255-2424

FCS DOES 1-30, Known only as a group of persons at the Fayette County, Kentucky County Sheriff's Office and "associated in-fact"
deft

PAMELA MILLER

Edward W. Gardner
[COR LD NTC]
Lexington-Fayette Urban
County Government
Department of Law
200 E Main Street
Lexington, KY 40507
(859) 258-3500

LFG DOES 1-60, Known only
as that group of individual
persons at the Lexington-

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Fayette, (Kentucky) Urban
County Government and
"associated in-fact"
deft

LOU A. RED CORN
deft

D. Brent Irvin
(See above)
[COR LD NTC]

CAO DOES 1-20, Known only as
a group of persons at the Office of
the Commonwealth Attorney for
for Kentucky, Twenty-Second (22nd)
Judicial District and "associated
in-fact"
deft

REBECCA M. OVERSTREET
deft

D. Brent Irvin
(See above)
[COR LD NTC]

CINDY G. SWARTZ

D. Brent Irvin
(See above)

ERNEST W. WILLIAMS
deft

Darrell Gene Townsend
[COR LD NTC]
Howell & Fisher
300 James Robertson Parkway

400 Court Square Building
Nashville, TN 37201-1107
(615) 244-3370

TODD D. FERGUSON
deft

D. Brent Irvin
(See above)
[COR LD NTC]

PAMELA D. GOODWINE
deft

D. Brent Irvin
(See above)

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[COR LD NTC]

ASSOCIATION-IN-FACT, THE
deft

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11/21/00 1 COMPLAINT (Summons(es) issued); Filing fee paid in the amount of $150; receipt # 77089.(bj) [Entry date 11/27/00]

11/21/00 2 MEMORANDUM & MEMORANDUM of Law by pltf in support of complaint [1-1] (bj) [Entry date 11/27/00]

11/21/00 3 APPENDIX Volumes 1 & 2 filed in support of Complaint [1-1] (bj) [Entry date 11/27/00]

12/4/00 4 RETURN OF SERVICE executed upon deft Carolyn P. Bishop by certified mail. (no date on green card; postmark stamp of 11/25/00 from the USPS in Lexington, KY) (dlt)
[Entry date 12/05/00]

12/4/00 5 RETURN OF SERVICE executed on deft Pamela D. Goodwine on 11/21/00 by certified mail. (dlt)
[Entry date 12/05/00]

12/4/00 6 RETURN OF SERVICE executed upon deft Donald Shannon by certified mail. (No date on the green card just a postmark from the USPS from Lexington, KY dated 11/25/00) (dlt) {Entry date 12/05/00]

12/4/00 7 RETURN OF SERVICE executed upon deft Todd D. Ferguson on 11/27/00 by certified mail. (dlt)
[Entry date 12/05/00]

12/4/00 8 RETURN OF SERVICE executed upon Doris Fleming on 11/25/00 by certified mail (dlt)
[Entry date 12/05/00]

12/4/00 9 RETURN OF SERVICE executed upon Jerry L. Kelly on 11/25/00 by certified mail.(dlt) [Entry date 12/05/00]

12/4/00 10 RETURN OF SERVICE executed upon deft John M. Vaughn on 11/27/00 by certified mail. (dlt)
[Entry date 12/05/00]

12/4/00 11 RETURN OF SERVICE executed upon deft Thomas D. Clark on 11/27/00 by certified mail. (dft) [entry date 12/05/00]

12/4/00 12 RETURN OF SERVICE executed upon deft Katherine Witt on 11/24/00 by certified mail. (dlt) [Entry date 12/05/00][Edit date 12/05/00]

12/4/00 13 RETURN OF SERVICE executed upon Lou A. Red Corn by certified mail. (no date on green card) (dlt) [Entry date 12/05/00]

12/4/00 14 RETURN OF SERVICE executed upon Rebecca M. Overstreet on 11/27/00 by certified mail. (dlt) [Entry date 12/05/00]

12/4/00 15 RETURN OF SERVICE executed upon deft Cindy G. Swartz by certified mail. (no date on green card) (dlt) [Entry date 12/05/00]

12/4/00 16 RETURN OF SERVICE executed upon deft Ernest W. Williams on 11/27/00 by certified mail. (dlt) [Entry date 12/05/00]

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12/5/00 17 ORDER by Judge Robert L. Echols: Case referred to Magistrate Judge Juliet E. Griffin for consideration of all pretrial matters, any disp motions filed shall be resolved by the District Judge. (cc: all counsel) EOD 12/06/00 (bj) [Entry date 12/06/00]

12/11/00 18 NOTICE of filing of Certificate of Good Standing by D. Brent Irvin for defts Thomas D. Clark, Lou A. Red Corn, Rebecca M. Overtstreet, Cindy G. Swartz, Todd D. Ferguson and Pamela D. Goodwine (certificate of good standing att'd) (bj) [Entry date 12/12/00]

12/11/00 19 CERTIFICATE of Good Standing filed from the Eastern District of KY by D. Brent Irvin, atty for defts Thomas D. Clark, Lou A. Red Corn,

Rebecca M. Overstreet, Cindy G. Swartz, Todd D. Ferguson and Pamela D. Goodwine. (bj) [Entry date 12/12/00]

12/11/00 20 MOTION by defts Thomas D. Clark, Lou A. Red Corn, Rebecca M. Overstreet, Cindy G. Swartz, Todd D. Ferguson and Pamela D. Goodwine for attorney D. Brent Irvin to appear pro hac vice o/b/o defts Thomas D. Clark, Lou A. Red Corn, Rebecca M. Overstreet, Cindy G. Swartz, Todd D. Ferguson and Pamela D. Goodwine. (bj) [Entry date 12/12/00]

12/11/00 -- PROPOSED order granting motion to proceed pro hac vice. (bj) [Entry date 12/12/00]

12/12/00 21 ORDER by Judge Robert L. Echols: this action is referred to Mag. Judge Griffin; the Order [17-2] referring this case to Judge Brown is vacated. (cc: all counsel) EOD 12/12/00 (bj)

12/13/00 22 MOTION by deft Pamela Miller for attorney Edward W. Gardner to appear pro hac vice o/b/o deft Pamela Miller (att'd certificate of good standing) (bj) [Entry date 12/14/00] [Edit date 12/14/00]

12/13/00 23 CERTIFICATE of Good Standing filed from the USDC, Eastern District of KY, by Edward W. Gardner, atty for deft Pamela Miller. (bj) [Entry date 12/14/00]

12/13/00 -- PROPOSED Order granting pro hac vice status for Edward W. Gardner. (bj) [Entry date 12/14/00]

12/14/00 24 RETURN OF SERVICE executed via certified mail upon deft Todd M. Layne on 12/7/00. (bj) [Entry date 12/15/00]

12/14/00 25 LETTER from pltf James G. Akers w/attachments re service on deft Pamela Miller. (bj) [Entry date 12/15/00]

12/15/00 26 NOTICE OF ATTORNEY APPEARANCE for deft Carolyn P. Bishop by Leonard F. Pogue, III, and Leslie Rosenbaum, Esq. (bj) [Entry date 12/18/00]

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12/15/00 27 MOTION by deft Carolyn P. Bishop for attorney Leslie Rosenbaum to appear pro hac vice o/b/o deft Carolyn Bishop (att'd certificate of good standing) (bj) [Entry date 12/18/00]

12/15/00 28 CERTIFICATE of Good Standing filed from the USDC, Eastern District of KY, by Leslie Rosenbaum, atty for deft Carolyn P. Bishop. (bj) [Entry date 12/18/00]

12/15/00 -- PROPOSED Order granting por hac vice for Leslie Rosenbaum, (bj) [Entry date 12/18/00]

12/15/00 29 MOTION by deft Carolyn Bishop to dismiss case (bj) [Entry date 12/18/00]

12/15/00 30 MOTION by Carolyn P. Bishop for extension of time to file memorandum or alternatively, for extension of time in which to file responsive pleadings with accompanying memorandum (bj) [Entry date 12/18/00]

12/15/00 -- PROPOSED Order granting 30 day extension to file memorandum. (bj) [Entry date 12/18/00]

12/15/00 31 MOTION by deft Doris Fleming to dismiss case or to transfer case to Eastern District of KY (bj) [Entry date 12/18/00]

12/15/00 32 MEMORANDUM by deft Doris Fleming in support of motion to dismiss case [31-1] or to transfer case to Eastern District of KY [31-2] (bj) [Entry date 12/18/00]

12/15/00 33 MOTION by deft Ernest W. Williams to extend time for filing an answer (bj) [Entry date 12/18/00]

12/15/00 34 MOTION by defts Todd M. Layne and Donald Shannon to dismiss defts Todd M. Layne and Donald Shannon from this action or to transfer case to the Eastern District of KY (att'd memorandum in support, exhibits A-B) (bj) [entry date 12/18/00]

12/15/00 35 MEMORANDUM by defts Todd M. Layne and Donald Shannon in support of motion to dismiss defts Todd M. Layne and Donald Shannon from this action [34-1] and motion to transfer case to the Eastern District of KY [34-2] (bj) [Entry date 12/18/00]

12/18/00 36 MOTION by deft Jerry L. Kelly (w/out entering his appearance) for enlargement of time to answer or otherwise plead (bj) [Entry date 12/19/00]

12/18/00-- PROPOSED Order granting extension of time for Jerry Kelly. (bj) [Entry date 12/19/00]

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12/18/00 37 MOTION by deft Pamela Miller to dismiss or, in the alternative to transfer case to Eastern District of KY (bj) [Entry date 2/19/00]

12/18/00 -- PROPOSED Order granting dismissal as to Pamela Miller. (bj) [Entry date 12/19/00]

12/18/00 38 MOTION by defts Thomas D. Clark, Lou A. Red Corn, Rebecca M. Overstreet, Cindy G. Swartz, Todd D. Ferguson and Pamela D. Goodwine to dismiss or transfer venue (bj) [Entry date 12/19/00]

12/18/00 39 MEMORANDUM by defts Thomas D. Clark, Lou A. Red Corn, Rebecca M. Overstreet, Cindy G. Swartz, Todd D. Ferguson and Pamela D. Goodwine in support of motion to dismiss [38-1] and to transfer venue [38-2] (att'd exhibits A-B) (bj) [Entry date 12/19/00]

12/18/00 40 MOTION by deft Katherine (Kathy) Witt for attorney Bennett E. Bayer to appear pro hac vice (bj) [Entry date 12/19/00]

12/18/00 41 CERTIFICATE of Good Standing filed from the USDC Eastern District of KY by Bennett E. Bayer for deft Katherine Witt. (bj) [Entry date 12/19/00]

12/18/00 42 MOTION by deft Katherine (Kathy) Witt to dismiss or, in the alternative to transfer case to Eastern District of KY. [Entry date 12/19/00]

12/18/00 43 MEMORANDUM by deft Katherine Witt in support of motion to dismiss [42-1] and motion

to transfer case to Eastern District of KY [42-2] (att'd exhibits 1-2) (bj) [Entry date 12/19/00]

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12/20/00 44 ORDER by Magistrate Judge Juliet E. Griffin: granting motion of attorney D. Brent Irvin to appear pro hac vice o/b/o defts Thomas D. Clark, Lou A. Red Corn, Rebecca m. Overstreet, Cindy G. Swartz, Todd D. Ferguson and Pamela D. Goodwine, [20-1]; the issue of whether Mr. Irvin should be required to associate local counsel is subject to further order of the Court; granting motion of attorney Edwards W. Gardner to appear pro hac vice o/b/o deft Pamela Miller [22-1]; again, the Court may revisit this issue any time; granting motion for attorney Leslie Rosenbaum to appear pro hac vice o/b/o deft Carolyn Bishop [27-1]; granting motion for Ernest W. Williams to extend time for filing an answer [33-1] to include 1/5/01; granting motion of deft Carolyn Bishop for extension of time to file a memorandum in support, or alternatively, for extension of time in which to file responsive pleadings with accompanying memorandum [30-1] to include 1/12/01; pltf has until 2/1/01 to respond to the following pending motions by defts (and to any other motion to dismiss or transfer filed 1/12/01 or earlier): motion to dismiss [42-1], motion to transfer case to District of KY [42-2], motion to dismiss [38-1], motion to transfer venue [38-2], motions to dismiss [37-1], motion to transfer case to Eastern District of KY [37-2], motion to dismiss defts Todd M. Layne and Donald Shannon from

this action [34-1], motion to transfer case to the Eastern District of KY [34-2], motion to dismiss case [31-1], motion to transfer case to Eastern District of KY [31-2], motion to dismiss case [29-1] (cc: all counsel) EOD 12/21/00 (bj) [Entry date 12/21/00]

12/20/00 45 ORDER by Magistrate Judge Juliet E. Griffin; Case transferred to Magistrate Judge E. C. Knowles pursuant to Administrative Order 138-2 (cc: all counsel) EOD 12/21/00 (bj) [entry date 12/21/00]

12/22/00 46 RESPONSE by pltf to defts' motions to dismiss [42-1], [38-1], [37-1], [34-1], [31-1], & [29-1], & motion for attorney Bennett E. Bayer to appear pro hace vice [40-1]; w/attachments (tlc) [Entry date 12/27/00]

12/26/00 47 ATTORNEY APPEARANCE for deft John J. Vaughn by William W. Allen (tlc) [Entry date 12/27/00]

12/26/00 48 MOTION by deft John J. Vaughn for order to permit him to practice in this particular case w/out local counsel (tlc) [Entry date 12/27/00]

12/26/00 49 NOTICE by deft John J. Vaughn of filing certificate of good standing on behalf of William W. Allen (tlc) [Entry date 12/27/00]

12/26/00 50 CERTIFICATE of good standing filed by deft John J. Vaughn on behalf of William W. Allen; Eastern District of KY (tlc) {Entry date 12/27/00]

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TERMED
50BD

12/26/00 51 MOTION by deft John J. Vaughn to dismiss the complaint, or in the alternative to transfer case (tlc) [Entry date 12/27/00]

12/26/00 52 MEMORANDUM by deft John J. Vaughn in support of motion to dismiss the complaint [51-1], or, in the alternative, to transfer case [51-2] (tlc) [Entry date 12/27/00]

12/28/00 53 ATTORNEY APPEARANCE for the deft Ernest W. Wiiliams by Darrell G. Townsend. (bj) [Entry date 12/29/00]

12/29/00 54 MOTION by pltf James G. Akers for reconsideration and/or in the alternative for leave to file amended response to defts' various motion(s) for permission to practice pro hac vice, to dismiss, for change of venue, raised defenses of various immunities inter alia (response submitted) (bj) [Entry date 01/02/01]

12/29/00 69 RESPONSE by pltf James G. Akers to deft John J. Vaughn, M.D.'s motion for order to permit him to practice in this particular case w/out local counsel [48-1], to dismiss the complaint [51-1] and to transfer case [51-2] (bj) [Entry date 01/26/01]

1/5/01 55 MOTION by deft Ernest W. Williams to dismiss [55-1] (bj) [Entry date 01/08/01]

1/5/01 56 MEMORANDUM OF LAW by Ernest W. Williams in support of motion to dismiss [55-1] (bj) [Entry date 1/09/01]

1/8/01 57 CERTIFICATE of Service by counsel for deft Ernest W. Williams of serving the motion to dismiss and memorandum in support to other counsel. (bj) [Entry date 01/09/01]

01/9/01 58 RETURN OF SERVICE executed via certified mail upon deft Allen I. Rushing on 12/21/00. (bj) [Entry date 01/10/01]

1/9/01 59 ORDER by Magistrate Judge E. C. Knowles: granting motion for attorney Bennett E. Bayer to appear pro hac vice on behalf of deft, Sheriff Kathy Witt [40-1] (cc: all counsel) EOD 1/10/01 (bj) [Entry date 01/10/01]

1/9/01 60 ORDER by magistrate Judge E. C. Knowles: granting motion by deft Jerry Kelly for enlargement of time of 30 days to answer or other wise plead [36-1] (cc: all counsel) EOD 1/10/01 (bj) {Entry date 01/10/01]

1/9/01 61 ORDER by Magistrate Judge E. C. Knowles: denying pltf's motions for reconsideration [54-1]; denying pltf's motion for leave to file amended response to defts' various motion(s) for permission to practice pro hac vice, to dismiss, for change of venue, raised defenses of various immunities inter alia [54-2] (cc: all counsel) EOD 1/10/01 (bj) [Entry date 01/10/01]

Proceedings include all events. TERMED
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1/11/01 62 ORDER by Magistrate Judge E. C. Knowles: granting motion for order to permit William Allen to practice in this case to represent deft John Vaughn [48-1] (cc: all counsel, Mr. Allen) EOD 1/12/01 (bj) [Entry date 01/12/01]

1/12/01 63 MOTION by deft Carolyn P. Bishop for permission to file an amended motion to dismiss (amended motion and memo in support submitted) (bj) [Entry date 1/16/01]

1/12/01 64 RESPONSE and/or OBJECTIONS by pltf James G. Akers to motion of deft Ernest W. Williams to dismiss [55-1] (bj) [Entry date 01/16/01]

1/18/01 65 MOTION by deft Allen I Rushing to extend time for filling an answer on behalf of deft Allen I Rushing (bj) [Entry date 1/22/01]

1/18/01 66 NOTICE of Service by deft Carolyn P. Bishop that a true and correct copy of her motion for permission to file an amended motion to dismiss and memo in support were served by mail on 1/12/01 to (all counsel). (bj) [Entry date 1/22/01]

1/22/01 67 RETURN OF SERVICE executed via certified mail upon deft Pamela Miller on 11/27/00; signed by J. Jones (bj) [Entry date 1/23/01]

1/22/01 68 RESPONSE and/or OBJECTIONS by pltf James G. Akers to deft Bishop's motion for permission to file an amended motion to dismiss [63-1] (att'd exhibits) (bj) [Entry date 01/23/01]

1/26/01 70 ORDER by Judge Robert L. Echols: granting motion to extend time for filling an answer on

behalf of deft Allen I. Rushing [65-1] to include 2/15/01. (cc: all counsel) EOD 1/29/01 (bj) [Entry date 1/29/01]

1/30/01 71 MOTION by deft Allen I. Rushing to dismiss (bj) [Entry date 01/31/01]

1/30/01 72 ORDER by Judge Robert L. Echols: granting deft Carolyn P. Bishop's motion for permission to file an amended motion to dismiss [63-1]; the clerk is directed to file the amended motion to dismiss and memorandum in support; pltf's response (D.E. No. 68) will also be treated as a response to the amended motion to dismiss. (cc: all counsel) EOD 1/31/01 (bj) [Entry date 01/31/01]

1/30/01 73 AMENDED MOTION by deft Carolyn P. Bishop to dismiss (pltf's response (D.E. No. 68) will also be treated as a response to this amended motion, per order D.E. No. 72) (bj) [Entry date 01/31/01]

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Proceedings include all events. TERMED
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1/30/01 74 MEMORANDUM by deft Carolyn P. Bishop in support of motion to dismiss [73-1] (attachments) (bj) [Entry date 01/31/01]

2/8/01 75 RESPONSE by pltf to deft Rushing's motion to dismiss [71-1] (bj) [entry date 2/9/01]

2/27/01 76 MOTION by deft Jerry L. Kelly to dismiss or to transfer case to the USDC ED/KY. (dlt) [Entry date 2/28/01]

2/27/01 77 MEMORANDUM by deft Jerry L Kelly in support of motion to dismiss [76-1] or alternatively to transfer case to the USDC ED/KY [76-2] (dlt) [Entry date 2/28/01]

3/9/01 78 RESPONSE & OBJECTIONS by pltf to deft Jerry Kelly's motion to dismiss [76-1] or to transfer case to the USDC ED/KY [76-2] (attachments) (bj) [Entry date 3/12/01]

9/17/01 79 MEMORANDUM OF THE COURT (cc: all counsel) EOD 9/18/01 (gi) [Entry date 09/18/01]

9/17/01 80 ORDER by Judge Robert L. Echols granting motions to transfer case to Eastern District of KY [31-2] [34-2] [37-2] [38-2] [42-2] [51-2] [76-2] for reasons explained in the accompanying memorandum; denying as moot mtns to dismiss case [31-1] [34-1] [37-1] [38-1] [42-1] [51-1] [55-1] [71-1] [73-1] [76-1]. Case transferred to USDC, ED/KY. EOD 9/18/01 (cc: all counsel) (gi) [Entry date 09/18/01]

9/21/01 81 NOTICE OF APPEAL by pltf for Dist. Court decision [80-2] (mg) [Entry date 9/24/01]

9/21/01 82 RECEIVED filing fee and forwarded to 6th CCA, rcpt #82006 (mg) [Entry date 9/24/01]

9/27/01 -- REMARK: Copy of NOA and docket sheet sent to the parties. (mg)

10/1/01 -- REMARK: faxed copy of letter as notification that no transcript will be necessary for appeal purposes. (mg)

10/1/01 83 ANSWER by deft Carolyn P. Bishop to [1-1] (mg) [Entry date 10/03/01]

10/5/01 -- SR Record on Appeal sent to the 6th CCA re [81-1] (mg)

10/22/01 85 NOTIFICATION by the 6th CCA of Appellate Docket # 01-6243 (mg) [Entry date 10/26/01]

10/23/01 84 LETTER from pltf as notification that no transcript will be necessary for appeal purposes (mg) [Entry date 10/24/01]

1/28/02 86 INFORMATION COPY from the 6th CCA dismissing the appeal. The mtn for reconsideration is denied as moot. (mg) [entry date 01/29/02]

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Proceedings include all events. TERMED
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3/8/02 87 MANDATE issued 3/4/02 from 6th CCA dismissing the appeal [86-1] filed 1/24/02 (mg) [Entry date 03/12/02]

3/15/02 88 LETTER from pltf James G. Akers, enclosing for the record on appeal, a copy of his letter to all respective counsel of record for the defts in this case and accompanying certificate of service executed by Dorothy M. Mackin, Agent for Pltf. (mg)

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[END OF DOCUMENT]

EXHIBIT "USSC-03" 35

March 14, 2002 **VIA U. S. MAIL - FIRST CLASS**

Mr. Roger L. Milam, Clerk
UNITED STATES DISTRICT COURT
Middle Tennessee District-Nashville Division
800 United States Courthouse
Nashville, Tennessee 37203

Dear Mr. Milam :

Re: James G. Akers v. Carolyn P. Bishop, ***et al***
U.S. District Court, Middle Tennessee District,
Case No. 3:00cv1142
U.S. Court of Appeals, Sixth Circuit,
Case No. 01-6243

Transmitted herewith is a copy of my letter, dated March 14, 2002, to all respective counsel-of-record for the Defendants in the above-styled action, and accompanying "CERTIFICATE OF SERVICE" executed by Dorothy M. Mackin, Agent for Plaintiff.

Unless there is some Federal or Local Rule to the contrary, I would ask that the same be entered into the "Official Record-on-Appeal [or Transfer]" and included with any records your office transmits to any future Courts of jurisdiction and/or venue with respect to this case.

Your cooperation and prompt attention shall be greatly appreciated.

Cordially,

s/ James G. Akers
James G. Akers, Plaintiff/Appellant/Petitioner

JGA/

ATTACHMENTS

cc: All addressees listed upon "ATTACHMENTS" hereto.

March 14, 2002 **VIA U. S. MAIL - FIRST CLASS**

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Lexington, Kentucky 40507
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Allen I. Rushing

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Stewart, Estes & Donnell
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Lou A. Red Corn;
Rebecca M. Overstreet;
Cindy G. Schwartz;
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Pamela R. Goodwine

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LFG Does 1 thru 60; &
L. F. U. C. G.

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Nashville, Tennessee 37201-1107
Counsel for: Earnest W. Williams

Ladies & Gentlemen:

Re: James G. Akers v. Carolyn P. Bishop, ***et al***
U.S. District Court, Middle Tennessee District,
Case No. 3:00cv1142
U.S. Court of Appeals, Sixth Circuit,
Case No. 01-6243

As I am certain all of you are aware, the above-styled case has yet to be formally remanded back to United States District Court for the Middle Tennessee District-Nashville Division and, consequently, has yet to be formally transferred to United States District Court for the Eastern District of Kentucky, at Lexington,

---

pursuant to the "ORDER" entered by Chief Judge Robert L. Echols on September 18, 2001. In short, the case is currently in limbo pending action by the Clerk of the Sixth Circuit Court of Appeals and subsequent action by the Clerk of U. S. District Court for the Middle Tennessee District-Nashville Division.

As previously signaled, I am currently in the process of preparing my Petitions for Writ of Certiorari, Writ of Mandamus, and/or Writ of Prohibition for timely filing with the United States Supreme Court and remain confident that at least one of those will be granted – thereby precluding transfer. It would seem that now is a logical time to consider a resolution of this case rather than continue with what all must surely recognize will be exhaustive litigation. The sole purpose and intent of this letter is, therefore, to ascertain if any of you are amenable to such an option.

Please do not misconstrue this to be, <u>in any way</u>, an indication that I am now any less resolved than ever to proceed with all legal measures necessary to obtain redress or that I lack sufficient resources with which to do so. It is just that this case

and its preceding ones have already needlessly consumed nearly eight (8) years of my life; wrought unimaginable hardships upon me, my family, and my career; and further placed unacceptable barriers between myself and my elderly mother, my sons, and my grandchildren – all of whom reside in Kentucky. Again, I am no less resolute than ever – only weary of this whole mess as are most of your clients, I suspect.

I would, therefore, suggest that any Defendants who are willing to enter into **good faith negotiations** at this time so indicate by authorizing their respective counsel-of-record to respond to this letter – **not later than this coming March 25, 2002**. They should clearly understand, however, that I do not consider any one of them to be less culpable than any other nor am I in the mood for any "superficial" negotiations or further delay tactics.

Although continuing with my hereinabove actions in the United States Supreme Court as planned, I shall await your timely responses and would suggest that each of you give this window of opportunity every due consideration in view of the untenable predicament of your respective clients.

Cordially,

s/ James G. Akers
James G. Akers, Plaintiff-Appellant

JGA/

cc: Mr. Roger Milam, Clerk; U.S. District Court, Middle Tennessee District-Nashville Division

CERTIFICATE OF SERVICE

COMES THE AFFIANT, Dorothy M. Mackin, and hereby certifies that: (1) I am not a party to the civil action styled "**JAMES G. AKERS, Plaintiff, v. CAROLYN P. BISHOP, et al, Defendants**"; (2) I am a **citizen** of the **United States of America** and the **State of Tennessee** therein; (3) I am over the age of 21; (4) to the best of my knowledge, information, and belief, I am duly qualified to execute service of process on behalf of Plaintiff James G. Akers; and (5) I have served an original of the foregoing letter dated March 14, 2002, upon each and every addressee listed thereupon and in that manner indicated, via "**UNITED STATES MAIL-FIRST CLASS**", postage pre-paid, on this, the 14th day of March, 2002.

s/ Dorothy M. Mackin
DOROTHY M. MACKIN,
Agent for Plaintiff
c/o POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024

STATE OF TENNESSEE)
)
) **ss.**
)
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove Dorothy M. Mackin has personally appeared before me on this, the 14th day of March, 2002, has acknowledged the foregoing, and has subscribed her signature thereto in my presence.

s/ Sherrie F. Hicks
NOTARY PUBLIC, Tennessee-at-large

My Commission expires: 03/26/2005

EXHIBIT "USSC-04" 41

FILED
FEB 21 2002
LEONARD GREEN, CLERK

Case No: 01-6243
UNTIED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

ORDER

JAMES G. AKERS
Plaintiff - Appellant

v.

CAROLYN P. BISHOP, et al
Defendants - Appellees

BEFORE: KENNEDY and DAUGHTREY, Circuit Judges; Bell, Chief District Judge*

Upon consideration of the motion previously filed by the appellant to stay the mandate,

It is ORDERED that the motion be and it hereby is **DENIED.**

ENTERED BY ORDER OF THE COURT

"s" / Leonard Green, Clerk

* The Honorable Robert Holmes Bell, Chief United States District Judge for the Western District of Michigan, sitting by designation.

UNITED STATES COURT OF APPEALS

For the Sixth Circuit
100 E Fifth Street, Rm 532
Potter Stewart U.S. Courthouse
Cincinnati, Ohio 45202-3988

Leonard Green
Clerk

Diane Schnur
(513)564-7037
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Filed: February 21, 2002

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RE: 01-6243
Akers vs. Bishop
District Court No. 00-01142

Enclosed is a copy of an order which was entered today in the above styled case.

Very truly yours,
Leonard Green, Clerk

s/Diane Schnur
Deputy Clerk

Enclosure

 EXHIBIT "USSC-05"

C.O.A. CASE NUMBER: 01-6243
IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES G. AKERS, Plaintiff-Appellant,	)	FILED FEB 13 2002 LEONARD GREEN, Clerk
v.	)	**PETITION FOR: STAY OF MANDATE**
CAROLYN P. BISHOP; et al, Defendants-Appellees.	)	

ON APPEAL FROM UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE-
NASHVILLE DIVISION

COMES THE PLAINTIFF-APPELLANT, James G. Akers (hereinafter "Akers'), **without counsel**, and, in strict accordance with Title 28 U.S.C. § 1654 in conjunction with **FRAP Rule 41(d)(2)(A), 6 Cir. R. 41(b), & 6 Cir. I.O.P. 41(c)**, files with this Honorable Court the within "PETITION FOR STAY OF MANDATE" otherwise effectuating transfer of this case to United States District Court for the Eastern District of Kentucky, at Lexington.

In support of his herein petition, Akers attaches and appends hereto as "EXHIBIT CA6-10" a draft of the "FINAL BRIEF FOR APPELLANT" which would have been filed pursuant to 6 Cir. R. 28(a), 6 Cir. R. 31(a), and Rules 32 (a) & (b) had the Briefing Schedule not been improperly held in abeyance by Deputy Clerk Diane Schnur on November 27, 2001. In further support, Akers asserts as follows:

1. Akers will file a timely Petition for Writ of Certiorari with the United States Supreme Court to determine the constitutionality and/or equity of this Honorable Court's application of the legal theorems set out in ***SongByrd v. Estate of Grossman***, 253 F.2d 680, 683 (2nd Cir.), *cert. denied* 531 U.S. 824 (2000); ***Lemon v. Druffel***, 253 F.2d 680, 683 (6th Cir. 1958); ***F.D.I.C. v. McGlamery***, 74 F.3d 218, 222 (10th Cir. 1996); & ***Middlebrooks v. Smith***, 735 F.2d 431, 432 (11th Cir. 1984) in apparent contravention of the specific language contained within TITLE 28 U.S.C. § 1292(a)(1) in conjunction with the "Collateral Order Doctrine" as well-established in, e.g., ***Cohen v. Beneficial Loan Corp.***, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); ***Abney v. United States***, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977); ***Armstrong v. McAlpin***, 625 F.2d 433, C.A.N.Y. (1980), citing *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); and ***Firestone Tire & Rubber Co. v. Risjord***, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981).

2. Alternatively, Akers will seek a Writ of Mandamus and/or Writ of Prohibition from the Supreme Court of the United States of America to preclude this case from being transferred to the United States District Court for the Eastern District of Kentucky based upon the issues presented in his timely-filed "RESPONSES" and/or "OBJECTIONS" to the various Defendants'-Appellees' pleadings within this Honorable Court of Appeals for the Sixth Circuit **as well as** the Honorable United States District Court for the Middle District of Tennessee-Nashville Division.

3. The history of this case and, particularly, the onerous history of Defendants-Appellees Overstreet, Red Corn, Miller, and Witt, make it abundantly clear that Akers will be subjected to extreme peril if ever returning to the Kentucky jurisdiction in which the transferee Federal Court is situated; the "ends of justice" do not require Akers to do so; and it can not reasonably be concluded that Akers will have any adequate remedy whatsoever after "the whole case has been...

...adjudicated" if, in the likely event, he is again fraudulently, oppressively, or otherwise unlawfully imprisoned by these Defendants-Appellees in order to prevent exposure of their corruption.

4. And, finally, this Honorable Court can rest assured that Akers will be prejudiced by deprivation of the physical presence of his witnesses who are residents of Middle Tennessee and intimidation of his witnesses who are residents of Kentucky's Federal Districts in the event this case is required to be litigated in Central Kentucky inasmuch and these Defendants-Appellees have already clearly demonstrated their propensity and prowess for tactics of confusion and delay.

WHEREFORE, the Plaintiff-Appellant, James G. Akers ("Akers'), **without counsel**, asks and prays of this Honorable Court to "**GRANT**" the issuance of the herein requested "STAY OF MANDATE" ordering transfer of this case to United States District Court for the Eastern District of Kentucky, at Lexington., pending the disposition of Akers' Petition for Writ of Certiorari or, alternatively, Petition Writ of Mandamus and/or Writ of Prohibition in the Supreme Court of the United States of America in order that Akers' rights and privileges secured by, ***inter alia***, the First Amendment to the United States Constitution may be properly preserved.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Appellant
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024
TELEPHONE: 615/834-2843
FACSIMILE: 615/831-9307

CERTIFICATE OF SERVICE

COMES THE AFFIANT, Dorothy M. Mackin, and hereby certifies that: (1) I am not a party to the civil action styled "**JAMES G. AKERS, Plaintiff-Appellant, v. CAROLYN P. BISHOP, et al, Defendants-Appellees.**"; (2) I am a **citizen** of the **United States of America** and the **State of Tennessee** therein; (3) I am over the age of 21; (4) to the best of my knowledge, information, and belief, I am duly qualified to execute service of process on behalf of Plaintiff James G. Akers; and (5) I have, on the date last written and notarized hereinbelow, served a true, accurate, and complete copy of the foregoing "PETITION FOR STAY OF MANDATE", together with all "EXHIBITS" appended thereto, via "**UNITED STATES MAIL-FIRST CLASS**", postage pre-paid, upon each Defendant-Appellee or their respective legal counsel of record in that manner as hereinafter follows:

(a) CAROLYN P. BISHOP:
Served Attorney: Leslie Rosenbaum, Esquire
300 Lexington Building
201 West Short Street
Lexington, Kentucky 40507

(b) DORIS FLEMING:
Served Attorney: David B. Scott, Esquire
Ortale, Kelley, Herbert & Crawford
P. O. Box 198985
Nashville, Tennessee 37219-8985

(c) ALLEN I. RUSHING:
Served Attorney: William W. Allen, Esquire
201 West Short Street
Lexington, Kentucky 40507-1269

(d) CBT DOES 1 THRU 40:

[Service inappropriate without leave of Court]

(e) TODD M. LAYNE:
Served Attorney: Robert L. Estes, Esquire
Stewart, Estes & Donnell
SunTrust Center, Suite 1401
424 Church Street
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(f) DONALD SHANNON:
Served Attorney: Robert L. Estes, Esquire
Stewart, Estes & Donnell
SunTrust Center, Suite 1401
424 Church Street
Nashville, Tennessee 37219

(g) JERRY L. KELLY:
Served Attorney: Augustus S. Herbert, Esquire
Middleton Reutlinger
2500 Brown & Williamson Tower
Louisville, Kentucky 40202

(h) SCC DOES 1 THRU 50:

[Service inappropriate without leave of Court]

(i) JOHN J. VAUGHAN, M.D.:
Served Attorney: William W. Allen, Esquire
201 West Short Street
Lexington, Kentucky 40507-1269

(j) THOMAS L. CLARK:
Served Attorney: D. Brent Irvin, Asst. Atty. General
Commonwealth of Kentucky
Capitol Building, Suite 118
700 Capitol Avenue
Frankfort, Kentucky 40601

(k) KATHERINE H. WITT:
Served Attorney: Bennett E. Bayer, Esquire
Landrum & Shouse
P. O. Box 951
Lexington, Kentucky 40588-2424

(l) FCS DOES 1 THRU 30:

[Service inappropriate without leave of Court]

-5-

(m) PAMELA MILLER:
Served Attorney: Theresa L. Holmes, Dir. of Litig.
L. F. U. C. G.
200 East Main Street
Lexington, Kentucky 40507

(n) LFG DOES 1 THRU 60:

[Service inappropriate without leave of Court]

(o) LOU A. RED CORN:
Served Attorney: D. Brent Irvin, Asst. Atty. General
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(p) CAO DOES 1 THRU 20:

[Service inappropriate without leave of Court]

(q) FCC DOES 1 THRU 10:

[Service inappropriate without leave of Court]

(r) REBECCA M. OVERSTREET:
Served Attorney: D. Brent Irvin, Asst. Atty. General
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700 Capitol Avenue
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(s) CINDY G. SCHWARTZ:
Served Attorney: D. Brent Irvin, Asst. Atty. General
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(t) ERNEST W. WILLIAMS:
Served Attorney: Darrell G. Townsend, Esquire
Howell & Fisher, PLLC
300 James Robertson Parkway
Nashville, Tennessee 37201-1107

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(u) TODD D. FERGUSON:
Served Attorney: D. Brent Irvin, Asst. Atty. General
Commonwealth of Kentucky
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(v) PAMELA R. GOODWINE:
Served Attorney: D. Brent Irvin, Asst. Atty. General
Commonwealth of Kentucky
Capitol Building, Suite 118
700 Capitol Avenue
Frankfort, Kentucky 40601

s/ Dorothy M. Mackin
DOROTHY M. MACKIN,
Agent for Appellant
c/o Post Office Box 3648
Brentwood, Tennessee 37024

STATE OF TENNESSEE)
)
) **ss.**
)
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove Dorothy M. Mackin has personally appeared before me on this, the 11th day of February, 2002, has acknowledged the foregoing, and subscribed her signature thereto in my presence.

s/ Sherrie F. Hicks
NOTARY PUBLIC, State-at-large

My Commission Expires: 03/26/2005

APPENDIX

("EXHIBIT CA6-10" only)

C.O.A. CASE NUMBER: 01-6243
IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES G. AKERS,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	**FINAL BRIEF**
	)	**FOR APPELLANT**
	)	
CAROLYN P. BISHOP; *et al*,	)	PURSUANT TO:
	)	6 CIR. R. 28(a), 32(a); &
Defendants-Appellees.	)	FRAP 32(a), (b)

ON APPEAL FROM UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE -
NASHVILLE DIVISION

THIS DOCUMENT WAS PREPARED BY:

s/ James G. Akers
JAMES G. AKERS, Plaintiff - Appellant
4708 TROUSDALE DRIVE
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STATEMENT OF THE CASE *SUB JUDICE*

On November 21, 2000, the Plaintiff-Appellant, James G. Akers (hereinafter "Akers"), **without counsel**, in strict accordance with Title 28 U.S.C. § 1654, filed his "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" [D.E. #1] and contemporaneously-filed "MEMORANDUM & MEMORANDUM OF LAW" [D.E. #2] (hereinafter "Akers Complaint" & "Akers' Memorandum", respectively) in the United States District Court for the Middle District of Tennessee - Nashville Division. Jurisdiction was asserted pursuant to the provisions of the Federal Statutes themselves; and venue was asserted on the basis that "the prevailing" overt acts alleged in Akers' Complaint had taken place within

the United States District Court for the Middle District of Tennessee, at Nashville. "Diversity of citizenship" of the parties was, at most, a secondary consideration.

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The factual allegations contained within Akers' Complaint, when coupled with the applicable Constitutional, Statutory, & Common Laws of the United States of America and "authorities" in support thereof as contained within Akers' Memorandum, speak for themselves. **Not even a single Defendant-Appellee has attempted to controvert even a single averment** and, in fact, they cannot do so without placing themselves in peril of still further penalties and/or sanctions pursuant to Federal Law. **The "merits" of Akers' herein case are not even arguable.**

On September 18, 2001, the Honorable Robert L. Echols, Chief Judge for the United States District for the Middle District of Tennessee at Nashville, entered his "ORDER" denying the Defendants' various "MOTION[S] TO DISMISS" but granting transfer of this action to the United States District Court for the Eastern District of Kentucky at Lexington [D.E. #80 and accompanying "MEMORANDUM", D.E. #79].[1]

It is apparent that the District Court either: (1) did not read Akers' pleadings in that Court; (2) did not understand Akers' pleadings in that Court; (3) did not afford due credibility to Akers' pleadings in that Court; (4) preferred to accept the Defendants'-Appellees' fraudulent renditions of the facts with respect thereto; and/or (5) ruled based upon a combination of "all the above".

As a matter of right, this appeal follows pursuant to Rules 4 & 28(a) of the Federal Rules of Appellate Procedure together with the "Collateral Order Doctrine" as set out in **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)**, in which the United States Supreme Court held that "...**certain orders were immediately appealable** (1) if they were collateral to the

merits; (2) if denial of an immediate appeal...

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[1] See hereunto relevant excerpts therefrom as quoted within Akers' hereinafter "ARGUMENT(S) I through V" & "CONCLUSION", pages 23 through 29 hereof.

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would result in irreparable damage to the party seeking review; and (3) if the issue raised was "too important" to "be deferred until the whole case is adjudicated."[2]

JURISDICTION (U. S. DISTRICT COURT)

The United States District for the Middle District of Tennessee, at Nashville, had both jurisdiction and venue pursuant to provisions of TITLE 18 U.S.C. § 1964(c); TITLE 18 U.S.C. § 1965(b); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3).

JURISDICTION (U. S. COURT OF APPEALS)

The United States Court of Appeals for the Sixth Circuit has jurisdiction to hear and adjudicate the within appeal, and to consider all matters with respect thereto, pursuant to the "Collateral Order Doctrine" as set forth in **Armstrong v. McAlpin, 625 F.2d 433, C.A.N.Y. (1980)**, citing **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)** in conjunction with **TITLE 28 U.S.C. § 1292(a)(1)**.

STATEMENT OF FACTS (SUMMARY STATEMENT)

The following are excerpts from Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" [D.E. #1] as filed...

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[2] See also: Clemence v. Clemence, 8 Kan.App.2d 377, 658 P.2d 368 (1983), i.e., "'Collateral order' doctrine allows appeal from interlocutory order

which conclusively determines issue completely separate from merits of action, and which cannot be given effective review on appeal from subsequent final judgement; **such order is, for purposes of appellate jurisdiction, 'final order'"** (emphasis added); **Firestone Tire & Rubber Co. v. Risjord, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981)**, i.e., "Because the litigation from which the instant petition arises had not reached final judgement at the time the notice of appeal was filed, **the order...is appealable under § 1291 only if it falls within the *Cohen* doctrine.**" (emphasis added); **Abney v. United States, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977)** at FN4, i.e., "Of course, **Cohen's collateral-order exception is equally applicable in both civil and criminal proceedings.**" (emphasis added)

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in the United States District Court for the Middle District of Tennessee, Nashville Division, on November 21, 2000:

> "1. On August 25, 1993, just two (2) months preceding the twenty-fifth (25th) anniversary of his marriage to Defendant Carolyn P. Bishop (nee Carolyn J. Patrick, then Carolyn P. Akers, now Carolyn P. Bishop, and referred to hereinafter as 'Bishop'), the Plaintiff, James G. Akers (hereinafter 'Akers') was awarded a sizeable cash settlement on behalf of Coleman/Akers & Akers, Incorporated (hereinafter 'C/AA'), a Kentucky corporation owned an operated by Akers and based in the Lexington, Kentucky, area. The series of outrageous events which have transpired thereafter, and as set forth hereinafter in detail, have been such that should shock the very conscience of any responsible citizen of a free and democratic society in the modern world.
>
> 2. In a manner strikingly similar to historical accounts of colonial Salem, Massachusetts; 'Nazi Germany; and 'cold war era' Soviet Bloc countries, Defendant Bishop and her hereinafter named co-conspirators have devised, effectuated, and perpetuated schemes to unlawfully seize, withhold, divert, and convert the property of Akers with intent to deprive him thereof; to unlawfully circumvent and/or abridge all of Akers' inalienable and lawful rights

pursuant to, ***inter alia***, Article I-Sections 9 & 10, Article III-Section 2, Article IV-Section 2, and the First, Fourth, Fifth, Sixth, Eighth, Thirteenth, and Fourteenth Amendments of/to the United States Constitution and, in both overt and covert concealment of those said schemes, to oppressively deprive Akers of his liberty in such a manner as is hereinafter set forth in detail. Those said schemes and actions of and/or by the named herein Defendants have not been limited to 'civil rights violations' under 'color of state law', 'color of office', and/or 'malicious prosecution' but extend, in fact, to criminal acts in blatant and direct violation of the Federal Laws as hereinafter enumerated.

3. As will be hereinafter shown, in detail, the Plaintiff Akers was: (a) assaulted, decoyed, inveigled, and robbed in May and June of 1994 and, in the covert concealment thereof, was; (b) unlawfully imprisoned in May and July of 1994 and, in covert concealment thereof; (c) blackmailed and/or extorted from July of 1994 through March of 1995, and in further concealment thereof; (d) essentially 'kidnapped' and fraudulently held in Nashville, Tennessee, during August and September, 1995, and, in the covert concealment thereof; (e) fraudulently extradited back to Kentucky in October of 1995 and, in the further concealment of the hereinbefore schemes; (f) fraudulently and maliciously accused, prosecuted, convicted, and then imprisoned in custody of the Fayette County [Kentucky] Sheriff and/or Kentucky Department of Corrections from May 22, 1996, until April 15, 1998, when; (g) Akers was released from custody on a $52,000 Full Cash Bond pursuant to an 'Opinion and Order', as rendered February 27, 1998, by the Kentucky Court of Appeals, which ruled that Akers' convictions and resulting imprisonment had been unlawfully achieved.

4. In the further concealment of those said schemes of/by the Defendants, and as an intentional and continuing course of conduct by them, Akers was: (a) further blackmailed/extorted in March of 1998; was

(b) further oppressively imprisoned in April of 1998; was (c) further blackmailed and/or extorted from April through October of 1998, ...

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and then; (d) yet again, oppressively and unlawfully prosecuted, convicted, and then imprisoned for the very same unconstitutional and fraudulent felony charges, pursuant to the very same unconstitutional and fraudulent indictment, as was the case in May of 1996.

5. Following Akers' additional unlawful, oppressive, and unconstitutional imprisonment since October 28, 1998, the Court of Appeals of Kentucky rendered Its second 'Opinion' on May 19, 2000, in which It reversed (in part) Akers' convictions for the second time and ruling, in hereunto relevant part, as follows:

'It is clear that the trial court failed to follow our instructions on remand';

'The court heard arguments as to the admissibility of the evidence. Prior to making its ruling, the court acknowledged that it had not read our decision';

'Without reading our decision, the court could not have followed our directives';

'While our opinion did not specifically so require, the trial court should have granted Akers separate trials on each count';

'By not holding separate trials, the trial court abused its discretion and denied Akers a fair trial...';

'Fairness and justice require us to reverse his (Akers) conviction...'

6. Akers is not an attorney, and does not have any formal training or education in the Law. Having

been forced to expend vast resources in defense of the hereinafter enumerated unlawful acts committed by the named Defendants, and ancillary expenses related thereto, Akers can no longer afford, nor will he seek, further assistance and/or counsel of attorneys with respect to the matters set forth herein." [D.E. #1, pages 2 - 5]

"COUNT ONE - CONSPIRACY

128. In about mid-July, 1993, in Fayette County, Kentucky, Defendants Pamela Miller, Katherine Witt, and LFG Does 1 thru 50 (known only as that group of individual persons and/or public officials within the Lexington-Fayette Urban County Government and 'associated-in-fact') jointly devised, implemented, and effectuated a 'conspiracy' in violation of TITLE 42 U.S.C. § 1985(2) & (3), ***inter alia***, to unlawfully deprive that class of persons which included Plaintiff Akers of rights, privileges, and/or immunities secured by, ***inter alia***, the Fourth, Fifth, & Fourteenth Amendments to the United States Constitution to the extent and in that manner more specifically set forth in hereinabove paragraphs 1, 2, 3(a), 3(b), 12 and more fully detailed in paragraph E-12 (and corresponding footnote [41] thereto) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which 'conspiracy' ultimately resulted in a 'chain conspiracy' in furtherance thereof as detailed in hereinafter 'COUNTS TWO, THREE, FOUR, TWELVE, & TWENTY-TWO'; and which 'chain conspiracy' ultimately resulted in commission of those 'overt acts' detailed in 'COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN' hereof; 'unlawful imprisonment' as detailed in 'COUNTS ELEVEN & FOURTEEN' hereof;

and which 'conspiracy', 'chain conspiracies', 'overt acts', and 'unlawful imprisonment' ultimately resulted in injuries to Akers' person and property as detailed in 'COUNTS TWENTY-FOUR & TWENTY-SIX' hereof.

COUNT TWO - CHAIN CONSPIRACY

129. At some time shortly following August 25, 1993, in Fayette County, Kentucky, Defendants Bishop, Fleming, Rushing, and CBT Does 1 through 40 (known only as a group of persons at Central Bank & Trust Company, Inc., and 'associated-in-fact'), jointly devised a 'chain conspiracy' in violation of TITLE 18 U.S.C. § 1985(2) & (3), ***inter alia***, in the furtherance of that 'conspiracy' detailed in hereinabove 'Count One', to unlawfully and/or unconstitutionally deprive Plaintiff Akers of his rights, privileges, and/or immunities secured by, ***inter alia***, Article 1-Section 10 [Cl.1], & Article IV-Section 2 [Cl.1] of the United States Constitution, in conjunction with the Fourth, Fifth, & Fourteenth Amendments thereto, in that manner as set forth in hereinabove paragraphs 3(a), 3(b), 3(c), 9, 12, 13, 14(d), 16, 17, 23 through 27, 29, 31 through 36, 38 through 41, 43, 44, 47, 48, 50(e), & 50(f), and more fully detailed in paragraphs E-12, E-13, E-14(d), E-16, E-17, E-23 through E-27, E-29, E-31 through E-36, E-38 through E-41, E-43, E-44, E-47, E-48, E-50(e), & E-50(f) (together with all corresponding footnotes respectively thereto) of Akers' herewith contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' hereto; and which said 'chain conspiracy' ultimately resulted in commission of 'overt acts' as detailed in 'COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN' hereof; 'unlawful imprisonment' detailed in 'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and property as detailed in 'COUNTS TWENTY-FOUR through TWENTY-SEVEN' hereof.

COUNT THREE - CHAIN CONSPIRACY

130. On, or about, April 8, 1994, in Fayette County and/or Mercer County, Kentucky, Defendants Layne and Shannon joined in the furtherance of that 'chain conspiracy' detailed in hereinabove "COUNT TWO" by committing specific acts in the furtherance thereof in that manner set forth in the hereinabove paragraphs 24 through 27, 29, 31(a), 31(b), 31(c), 34, 38, 40, 43, 44, & 50 (e) and more specifically detailed in paragraphs E-24 through E-27, E-29, E-31(a), E-31(b), E-31(c), E-34, E-38, E-40, E-43, E-44, & E-50(e), together with all corresponding and referenced footnotes thereto, respectively, of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' herewith; and which said 'chain conspiracy' ultimately resulted in commission of those 'overt acts' as detailed in 'COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN' hereof; 'unlawful imprisonment' of Akers as detailed in 'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and property detailed in 'COUNTS TWENTY-FOUR through TWENTY-SEVEN' hereof.

COUNT FOUR - CHAIN CONSPIRACY

131. On, or about, June 16, 1994, in Fayette County and/or Mercer County, Kentucky, Defendants Vaughan, Kelly, and SCC Does 1 thru 50 (known only as a group of individual persons at the Southland Church of Lexington, Inc., and 'associated-in-fact')...

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joined in the furtherance of that 'chain conspiracy' outlined in hereinabove 'COUNTS TWO & THREE' by committing specific acts in furtherance thereof in that manner as set forth in hereinabove paragraphs 41, 42, 46, 48, & 50 and as more fully detailed in paragraphs E-41, E-42, E-46, E-48, & E-50 (together with all the corresponding footnotes thereto, respectively) of Akers'

herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which said 'chain conspiracy' ultimately resulted in commission of those 'overt acts' as detailed in 'COUNTS FIVE, SIX, SEVEN, EIGHT, NINE, TEN, & THIRTEEN' hereof; 'unlawful imprisonment' of Akers as detailed in 'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and his property as detailed in 'COUNTS TWENTY-FOUR through TWENTY-SEVEN' hereof.

COUNT FIVE - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

132. On, or about, October 28, 1994, in Fayette County and/or Mercer County, Kentucky, Defendants Bishop, Fleming, Rushing, CBT Does 1 through 40 (known only as a group of persons at Central Bank & Trust Company, Inc., 'associated-in-fact'), Layne, Shannon, Kelly, SCC Does 1 through 50 (known only as that group of persons at the Southland Christian Church of Lexington, Inc., and 'associated-in-fact'), collectively and in concert each with another, with a common scheme and purpose, devised, implemented, and effectuated an intentional course of conduct in furtherance of hereinabove 'COUNTS TWO through FOUR', with the intent to deprive Plaintiff Akers of rights, priveleges, and immunities secured by, ***inter alia***, Article I-Section 9 [Cl. 1], Article IV-Section 2 [Cl. 1], of the United States Constitution and the Fourth, Fifth, & Fourteenth Amendments thereto and, in addition thereto, ***inter alia***, Article 1, Sections 3, 8, & 14 of the Constitution of Tennessee, by committing specific 'overt acts' in furtherance thereof and in the manner as set forth in hereinabove paragraphs 2, 3(c), 51, 54, 56 through 58, & 61 through 68 as more detailed within paragraphs E-51, E-54, E-56 through E-58, & E-61 through E-68, (together with all referenced and correspondingly-noted footnotes thereto, respectively) of Akers' contemporaneously-filed 'MEMORANDUM &

MEMORANDUM OF LAW' herewith; and which said 'overt acts' ultimately resulted in 'unlawful imprisonment' detailed in 'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and his property as detailed in 'COUNTS TWENTY-FOUR & TWENTY-SIX' hereof.

COUNT SIX - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

133. On, or about, March 21, 1995, in Fayette County and/or Mercer County, Kentucky, Defendants Witt and FCS Does 1 through 30 (known only as that group of persons at the Fayette County Sheriff's office and 'associated-in-fact') joined in the furtherance of that 'collective and concerted common scheme and purpose' as outlined in hereinabove 'COUNT FOUR' by committing specific 'overt acts' in the furtherance thereof, in the manner set forth in hereinabove paragraphs 61, 63, 77, & 79 and more specifically detailed in paragraphs E-61, E-63, E-77, & E-79 (together with all corresponding and referenced footnotes thereto, respectively) of Akers' herewith contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which said 'overt acts' ultimately resulted in 'unlawful imprisonment' of Akers as detailed in...

...'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and his property as detailed in 'COUNTS TWENTY-FOUR & TWENTY-SIX' hereof.

COUNT SEVEN - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

134. On, or about, March 21, 1995, in Fayette County and/or Mercer County, Kentucky, Defendants Clark, LFG Does 1 through 60 (known only as that

group of persons at the Lexington-Fayette Urban County Government and 'associated-in-fact'), and CAO Does 1 through 20 (known only as that gpoup of persons at the Office of the Commonwealth's Attorney for the Twenty-second Judicial District, and 'associated- in-fact') joined in the furtherance of that aforesaid 'collective and concerted common scheme and purpose' as outlined in hereinabove 'COUNTS FOUR through SIX' by committing specific acts in the furtherance thereof in that manner set forth in the hereinabove paragraphs 61, 63, 77, & 79 and more specifically detailed in paragraphs E-61, E-63, E-77, & E-79 (together with all corresponding and referenced footnotes thereto, respectively) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which said 'overt acts' ultimately resulted in 'unlawful imprisonment' of Akers as detailed in 'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and his property as detailed in 'COUNTS TWENTY-FOUR & TWENTY-SIX' hereof.

COUNT EIGHT - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

135. On, or about, November 1, 1995, in Fayette County, Kentucky, Defendant Red Corn joined in that 'chain conspiracy' as detailed in hereinabove 'COUNTS ONE through FOUR' and the aforesaid 'collective and concerted common scheme and purpose' as detailed in hereinabove 'COUNTS FIVE, SIX, and SEVEN' by committing specific 'overt acts' in furtherance thereof in that manner set forth in the hereinabove paragraphs 82, 83, 84, 85, 86.I through 86.X, 89, 90(a), 90(b), 90(d), 92, 94, & 96 and more specifically as detailed in paragraphs E-82, E-83, E-84, E-85, E-86.I through E-86.X, E-89, E-90(a), E-90(b), E-90(d), E-92, E-94, & E-96 (together with all the corresponding and referenced footnotes thereto, respectively) of Akers' herewith and contemporaneously-filed 'MEMORANDUM &

MEMORANDUM OF LAW'; and which said 'overt acts' ultimately resulted in 'unlawful...

...imprisonment' of Akers as detailed in 'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and his property as detailed in 'COUNTS TWENTY-FOUR through TWENTY-SEVEN' hereof.

COUNT NINE - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

136. On, or about, November 1, 1995, in Fayette County, Kentucky, Defendant Overstreet joined in that 'chain conspiracy' as detailed in hereinabove 'COUNTS ONE through FOUR' and the aforesaid 'collective and concerted common scheme and purpose' as detailed in above 'COUNTS FIVE through EIGHT' by committing specific 'overt acts' in furtherance thereof in that manner set forth in the hereinabove paragraphs 81, 82, 84, 86.I through 86.X, 87, & 88 and as more specifically detailed in paragraphs E-81, E-82, E-84, E-86.I through E-86.X, E-87, & E-88 (together with all the corresponding footnotes thereto, respectively) of Akers' herewith contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which said 'overt acts' ultimately resulted in 'unlawful imprisonment' of Akers as detailed in 'COUNTS ELEVEN & FOURTEEN' hereof; and injuries to Akers in his person and his property detailed in 'COUNTS TWENTY-FOUR through TWENTY-SEVEN' hereof.

COUNT TEN - OVERT ACTS/
FEDERAL JURISDICTION INVOKED

137. On, or about, March 5, 1997, in Franklin and/or Fayette County, Kentucky, Defendant Schwartz joined in that 'chain conspiracy' detailed in hereinabove 'COUNTS ONE through FOUR' and 'collective and

concerted common scheme and purpose' as detailed in hereinabove 'COUNTS through EIGHT' by committing specific 'overt acts' in furtherance of those 'conspiracies' and 'overt acts' in furtherance thereof in that manner set forth in the hereinabove paragraphs 91 & 93 and more specifically as detailed in paragraphs E-91 & E-93 (together with corresponding footnotes thereto, respectively) of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' hereto; and which 'overt acts' contributed to the 'unlawful imprisonment' of Akers; and injuries to Akers in his person and his property as detailed in 'COUNTS TWENTY-FOUR through TWENTY-SEVEN' hereof.

COUNT ELEVEN - UNLAWFUL IMPRISONMENT

138. As the proximate result of those 'conspiracies', and 'chain conspiracies' as detailed in hereinabove 'COUNTS ONE through FOUR', and 'overt acts' in the furtherance thereof as detailed in hereinabove 'COUNTS FIVE through TEN', Akers was 'unlawfully imprisoned' in an aggregate of SEVEN HUNDRED TWENTY-EIGHT (728) DAYS in the custody of the Fayette County [Kentucky] Sheriff, Davidson County [Tennessee] Sheriff, and the Kentucky Department of Corrections, respectively, and thereby injured in his person and in his property in that manner as detailed within hereinabove paragraphs 122(b), 125, & 126, all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, ***inter alia***.

COUNT TWELVE - FURTHER CHAIN CONSPIRACY/COVER-UP

139. Beginning on, or about, February 27, 1998, and continuing through July 7, 2000, in Fayette County, Mercer County, and/or Franklin County, Kentucky, Defendants Bishop, Fleming, CBT Does 1 through 40 (known only as that group of persons at Central Bank & Trust Company, Inc., and 'associated-in-fact'), Layne, Shannon, SCC Does 1 thru 50 (known only as a group of individual persons at Southland Church of Lexington,

Inc., and 'associated-in-fact'), Vaughan, Red Corn, Overstreet, & Ferguson engaged in an intentional and continuing course of conduct in the furtherance of those 'conspiracies' and/or 'chain conspiracies' as detailed hereinabove 'COUNTS ONE through FOUR', and those 'overt acts' in furtherance thereof as detailed in hereinabove 'COUNTS FIVE through TEN', by committing additional 'overt acts' in the furtherance and covert concealment thereof as detailed in hereinabove paragraphs 97, 98, 99, 103, 104, 106, 107, 108, 110.I through 110.X, 111 through 117, 119, & 121 and more specifically as detailed in paragraphs E-97, E-98, E-99, E-103, E-104, E-106, E-107, E-108, E-110.I through E-110.X, E-111 through E-117, E-119, & E-121 (together with all the corresponding and referenced footnotes thereto, respectively) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which 'overt acts' resulted in...

...further 'unlawful imprisonment' of Akers detailed in hereinabove 'COUNT FOURTEEN'; and further injuries to Akers in his person and his property detailed in 'COUNTS TWENTY-FIVE & TWENTY-SIX' hereof; all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, ***inter alia***.

COUNT THIRTEEN - FURTHER OVERT ACTS/COVER-UP

140. At some time after October 28, [1998], in Fayette County, Kentucky, FCC Does 1 through 10 (known only as a group of persons at the Office of the Fayette [Kentucky] County Court Clerk Office, and 'associated- in-fact') joined in that 'further chain conspiracy' as detailed in hereinabove 'COUNT TWELVE' when they engaged in an intentional and continuing course of conduct in the furtherance thereof

by committing additional 'overt acts' in furtherance and covert concealment thereof by fraudulently redacting that portion of the 'official state court record' as detailed in hereinabove paragraph 110.V(k), thereby contributing to the further 'unlawful imprisonment' of Akers as detailed in hereinabove "COUNT FOURTEEN"; and further injuries to Akers in his person and property detailed in herein 'COUNTS TWENTY-FIVE & TWENTY-SIX', in violation of TITLE 18 U.S.C. §§ 1983 & 1985.

COUNT FOURTEEN - UNLAWFUL IMPRISONMENT/COVER-UP

141. As the proximate result of those 'conspiracies', 'chain conspiracies' detailed in hereinabove 'COUNTS ONE through FOUR'; and 'overt acts' in the furtherance thereof as detailed in hereinabove 'COUNTS FIVE, SIX, SEVEN, EIGHT, TEN, & TWELVE', Akers was again 'unlawfully imprisoned' in an aggregate of SIX HUNDRED SEVEN (607) DAYS in the custody of the Fayette County [Kentucky] Sheriff and the Kentucky Department of Corrections, respectively, and thereby further injured in his person and his property in that manner as detailed in hereinabove paragraphs 122(b), 125, & 126, all in violation of TITLE 18 U.S.C. §§ 1983 & 1985, ***inter alia***.

COUNT FIFTEEN - R.I.C.O. VIOLATIONS

142. In the course thereof those hereinabove 'COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN', Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as that group of persons at the Southland Christian Church of Lexington, Inc., and 'associated-in-fact'), collectively and in concert each with the other, with common scheme and purpose, devised, effectuated, and/or otherwise participated in and, thereby, committed two or more 'predicate acts' constituting a 'pattern' of 'racketeering activitiy' as enumerated in hereinafter subparagraphs 142(a) through

142(d); and used income derived therefrom to acquire and/or maintain interests in and/or participate in conduct of affairs of the 'enterprises' known as Southland Christian Church of Lexington, Inc., and the 'Association-in-fact' (comprised of all the hereinabove 'persons' named as 'Defendants' herein, both jointly and severally, as herein 'associated-in-fact') through a 'pattern of racketeering activity'; and the 'activities' of which said 'enterprises' having and maintaining affects on both 'interstate and foreign commerce' at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and those specific 'predicate acts' are as hereinafter enumerated:

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(a) On, or about, May 12, 1994, in Fayette County, Kentucky, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of persons at Southland Christian Church of Lexington, Inc., and 'associated-in-fact'), collectively and in concert each with the other, with common scheme and purpose, devised, effectuated, and/or otherwise participated in the commission of 'kidnapping' in violation of Title 18 U.S.C. § 1201 and K.R.S. 508.130, in preparation for the hereinafter predicate acts depicted 'COUNT FIFTEEN(b) & (c)', in that manner as set forth in hereinabove paragraphs 31, 32, 33, 34, & 38, and as further detailed in parapraphs E-31, E-32, E-34, & E-38 (with all corresponding footnotes thereto, respectively) of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' herewith; and which 'predicate act' ultimately resulted in injuries to Akers in his businesses and/or property as detailed in hereinabove paragraphs 125 & 127;

(b) From May 12, 1994 until June 29, 1994, in both Fayette County, Kentucky, and/or Centre City, Minnesota, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of persons at Southland Christian Church of Lexington, Inc., as herein 'associated-in-fact'), acting collectively and in concert one with the other, in covert preparation for that further predicate act depicted as 'COUNT FIFTEEN(c)' hereof, and with a common scheme and purpose, devised, implemented, effectuated, or otherwise participated in, the additional predicate act of 'unlawful imprisonment' of Akers in violation of K.R.S. 509.020 and, therefore, in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a), in that manner detailed in hereinabove paragraphs 31, 32, 33, 34, & 38 and as further detailed in parapraphs E-31, E-32, E-34, & E-38 (together with all corresponding footnotes thereto, respectively) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which 'predicate act' ultimately resulted in injuries to Akers in his person, businesses, and property as further detailed in hereinabove paragraphs 125 & 127;

(c) On, or about, June 28, 1994, in Fayette and/or Mercer County, Kentucky, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of persons at Southland Christian Church of Lexington, Inc., as herein 'associated-in-fact'), acting collectively and in concert each with the other, and with a common scheme and purpose, devised, effectuated, and/or otherwise participated in, the additional predicate act of 'theft by unlawful taking or disposition' of property of Akers and hereinabove Coleman/Akers & Akers, Inc. (C/AA) valued in excess of $300.00, in violation

of K.R.S. 514.030 and, therefore, in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a), in that manner as is set forth in hereinabove paragraphs 43 and further detailed in parapraph E-43 (together with corresponding footnotes [55] & [56] thereto) of Akers' contemporaneously-filed 'Memorandum & Memorandum of Law' herewith; and which 'predicate act' ultimately resulted in injuries to Akers in his businesses and property detailed in hereinabove paragraphs 125 & 127; &

(d) On, or about, June 28, 1994, in Fayette and/or Mercer County, Kentucky, Defendants Bishop, Fleming, Layne, and SCC Does 1 through 50 (known only as a group of persons at Southland Christian Church of Lexington, ...

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...Inc., as herein 'associated-in-fact'), acting collectively and in concert each with the other, and with a common scheme and purpose, devised, effectuated, and/or otherwise participated in, the further predicate act of 'tampering with physical evidence' in violation of Title 18 U.S.C. § 1512 and K.R.S. 514.030 and, therefore, in violation of Title 18 U.S.C. §§ 1961(1) & 1962(a), in that manner as is set forth in hereinabove paragraph 43 and further detailed in parapraph E-43 (with corresponding footnotes [55] & [56] thereto) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which 'predicate act' ultimately resulted in injuries to Akers in his person, businesses, and property as detailed in hereinabove paragraphs 125 & 127.

COUNT SIXTEEN - R.I.C.O. VIOLATIONS

143. In the course thereof those hereinabove 'COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN', Defendants Bishop, Fleming, and Vaughan collectively and in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or otherwise participated in and, thereby committed two or more 'predicate acts' constituting a 'pattern' of 'racketeering activity' as enumerated in hereinafter subparagraphs 143(a); and used income derived therefrom to acquire and/or maintain interests in and/or participate in conduct of the affairs of the 'enterprises' known as Dr. John J. Vaughan, M. D., and the 'Association-in-fact' (comprised of all hereinabove 'persons' named as 'Defendants' herein, both jointly and severally, and 'associated-in-fact') through such a 'pattern' of 'racketeering activity'; and the 'activities' of those said 'enterprises' having maintained affects on 'interstate and foreign commerce'; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and those specific "predicate acts" are as hereinafter enumerated:

(a) Beginning on, or about, June 16, 1994, in Fayette County, Kentucky, Defendants Bishop, Fleming, and Vaughan, proceeding in concert each with the other, with a common scheme and purpose, devised, effectuated, implemented, and/or otherwise participated in, the commission of the predicate acts of 'wire fraud' (in violation of Title 18 U.S.C. § 1341) and 'mail fraud' (in violation of Title 18 U.S.C. § 1343) in that manner as set forth in hereinabove paragraphs 2, 8, 28, 35, 36, 41, 42, 48, & 49 and further detailed in parapraphs E-2, E-8, E-28, E-35, E-36, E-41, E- 42, E-48, & E-48 (together with all corresponding and referenced footnotes thereto, respectively) of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' herewith; and

which 'predicate acts' ultimately resulted in injury to Akers in his person, businesses, and property as detailed in hereinabove paragraphs 125 & 127.

COUNT SEVENTEEN - R.I.C.O. VIOLATIONS

144. In the course thereof those hereinabove 'COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN', Defendants Bishop, Fleming, and Kelly collectively and in concert each with the other, with a common scheme and purpose, devised, implemented, effectuated, and/or otherwise participated in, and thereby committed two or more 'predicate acts' constituting a 'pattern' of 'racketeering activity' as enumerated in hereinafter subparagraph 144(a), in attempt to derive funds therefrom for use in acquisition

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of, or maintaining interests in, and/or participating in the conduct of the affairs of the 'enterprise' known as the 'Association-in-fact' (comprised of all hereinabove 'persons' named as 'Defendants' herein, jointly and severally, and 'associated-in-fact') through a 'pattern' of "'racketeering activity'; and the 'activities' of which said 'enterprises' having had and/or maintained affects on both 'interstate and foreign commerce' at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and those said specific 'predicate acts' are as hereinafter enumerated:

(a) On, or about, September 23, 1994, in Fayette County, Kentucky, Defendants Bishop, Fleming, and/or Kelly, collectively and in concert each with the other, with a common scheme and purpose, devised, effectuated, and/or otherwise participated in the commission of 'forgery in the second degree' (in violation of K.R.S. 516.030), and 'theft by extortion' (in violation of K.R.S.

514.040), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in hereinabove paragraph 50 and as further detailed in paragraph E-50 (with corresponding footnote [62] thereto) of Akers' herewith contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which 'predicate acts' ultimately resulted in injuries to Akers in his businesses and/or property as detailed in hereinabove paragraphs 125 and 127 and/or 'COUNTS TWENTY-FOUR, TWENTY-SIX, & TWENTY-SEVEN' hereof.

COUNT EIGHTEEN - R.I.C.O. VIOLATIONS

145. In the course thereof those hereinabove 'COUNTS TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN', Defendants Bishop & Rushing, acting in concert each with the other, with a common scheme, devised and/or effectuated and, thereby, committed two or more 'predicate acts' constituting a 'pattern' of 'racketeering activity' as enumerated in hereinafter subparagraph 145(a), in an overt attempt to use income derived therefrom in acquisition of, maintaining interest in, and participating in conduct of the affairs of, the 'enterprise' known as the 'Association-in-fact' comprised of all hereinabove 'persons' named as 'Defendants' herein, jointly and severally, and 'associated-in-fact') through a 'pattern' of 'racketeering activity'; and the 'activities' of which said 'enterprise' both having and maintaining affects on 'interstate and foreign commerce' at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and those specific 'predicate acts' are as hereinafter enumerated:

(a) Beginning on, or about, October 23, 1994, via interstate telephonic communications between Fayette County, Kentucky, and Williamson County, Tennessee, Defendants Bishop and Rushing, acting in concert each with the other, with a common scheme and purpose,

devised, effectuated, and/or otherwise participated in the commission of the two and distinctly separate predicate acts of 'blackmail' (in violation of Title 18 U.S.C. § 873); and 'extortion' (in violation of Title 18 U.S.C. § 875); both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in hereinabove paragraph 56 and more specifically detailed in paragraph E-56 (together with corresponding footnote [67] thereto) of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' herewith; and which 'predicate acts' resulted in injuries to Akers in his businesses and in his property as detailed in hereinabove paragraphs 125 & 127.

COUNT NINETEEN - R.I.C.O. VIOLATIONS

146. In the course thereof those hereinabove 'COUNTS ONE, TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN thru EIGHTEEN', Defendant Red Corn joined in those 'conspiracies', 'chain conspiracies', and 'overt acts' in furtherance thereof on, or about November 1, 1995, in Fayette County and/or Mercer County, Kentucky, and acting both independently and in concert and/or consortium with those other Defendants named herein, with a common scheme and purpose, devised, implemented, effectuated, and/or otherwise participated in, and thereby committed two or more 'predicate acts' constituting a 'pattern' of 'racketeering activity' as enumerated in hereinafter subparagraph 146(a) through 146(d), and having derived funds therefrom, and attempting to derive additional funds therefrom for her use in acquisition of, or maintaining interests in, or participating in the conduct of the affairs of the 'enterprise' known as the 'Association-in-fact', comprised of all the hereinabove 'persons' named as

'Defendants' herein, jointly and severally, and 'associated-in-fact') through a 'pattern' of 'racketeering activity'; and the 'activities' of which having affects on 'interstate and/or foreign commerce'; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and those 'predicate acts' are as hereinafter enumerated:

(a) On, or about, November 6, 1995, in Fayette County, Kentucky, Defendant Red Corn collaborated with, unlawfully influenced, assisted, and/or directed Defendant Bishop in fraudulent testimony before the Fayette County [Kentucky] Grand Jury and, therefore, acted in concert with Bishop, with a common scheme and purpose, in effectuating and/or participating in commission of the 'predicate acts' of 'tampering with a witness' (in violation of TITLE 18 U.S.C. § 1512) and 'influencing [a] juror generally' (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in hereinabove paragraphs 81 & 82 and as further detailed in paragraphs E-81 & E-82 (with corresponding footnotes [81] & [82] thereto) of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' herewith; and which 'predicate acts' ultimately resulted in injuries to Akers in his businesses and/or property as detailed in hereinabove paragraph 125 & 127 and 'COUNTS TWENTY-FOUR through TWENTY-SEVEN' hereof;

(b) In mid-May, 1995, in Fayette County, Kentucky, via telephonic communications to Pulaski County, Kentucky, Defendant Red Corn effectuated commission of the 'predicate act' of 'tampering with a witness' in violation of TITLE 18 U.S.C. § 1512 and, thereby, violated provisions of TITLE 18 U.S.C. §§ 1961 & 1962, in that manner set forth in hereinabove paragraph 86.I(a) and further detailed in paragraph E-

86.I(a), together with corresponding footnote [85] thereto, of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' herewith; and which said 'predicate act' resulted in injuries to Akers in his businesses and/or property as detailed in hereinabove paragraph 127 and/or 'COUNT TWENTY-SEVEN' hereof;

(c) On May 20 through May 22, 1995, in Fayette County, Kentucky, Defendant Red Corn committed numerous of the 'predicate acts' of 'tampering with a witness' (in violation of TITLE 18 U.S.C. § 1512) and 'influencing [a] juror generally' (in violation of TITLE 18 U.S.C. § 1503), both being violations of...

...TITLE 18 U.S.C. §§ 1961 & 1962, in those manners as set forth in hereinabove paragraphs 86.II through 86.VIII and further detailed in paragraphs E-86.II through E-86.VIII (together with corresponding footnotes [86] through [93] thereto) of Akers' herewith contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which such additional 'predicate acts' further resulted in injuries to Akers in his businesses and/or property as detailed in hereinabove paragraph 127 and 'COUNT TWENTY-SEVEN' hereof; &

(d) On October 26 through 28, 1998, in Fayette County, Kentucky, Defendant Red Corn committed numerous of the 'predicate acts' of 'tampering with a witness' (in violation of TITLE 18 U.S.C. § 1512) and 'influencing [a] juror generally' (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in those manners set forth in

hereinabove paragraphs 110.III through 110.VII, 110.IX, & 110.X, as further detailed in paragraphs E-110.III through E-110.VII, E-110.IX, & E-110.X (together with corresponding footnotes [108] thru [126] thereto) of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which additional 'predicate acts' resulted in further injuries to Akers in his businesses and/or property as detailed in hereinabove paragraph 127 and "COUNT TWENTY-SEVEN" hereof.

COUNT TWENTY - R.I.C.O. VIOLATIONS

147. In the course thereof those hereinabove 'COUNTS ONE, TWO, FIVE, ELEVEN, TWELVE, & FOURTEEN thru EIGHTEEN', Defendant Overstreet joined in those 'conspiracies', 'chain conspiracies', and 'overt acts' in furtherance thereof on, or about, November 10, 1995, in Fayette County and/or Mercer County, Kentucky, and acting both independently and in concert and/or consortium with those other Defendants named herein, with a common scheme and purpose, devised, implemented, effectuated, and/or otherwise participated in, and thereby committed two or more 'predicate acts' constituting a 'pattern' of 'racketeering activity', as enumerated in hereinafter subparagraphs 146(a) & 146(b), and having derived funds therefrom, and attempting to further derive additional funds therefrom for her use in acquisition of, and/or maintaining interests in, and/or participating in conduct of the affairs of the 'enterprise' known as the 'Association-in-fact' (comprised of all hereinabove 'persons' named as 'Defendants' herein, jointly and severally, and 'associated-in-fact') through a 'pattern of racketeering activity'; and the 'activities' of which 'enterprise' having affects on 'interstate and/or foreign commerce'; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and those 'predicate acts' are as hereinafter enumerated:

(a) On May 20 through May 22, 1995, in Fayette County, Kentucky, Defendant Overstreet committed two or more 'predicate acts' of 'tampering with a witness' (in violation of TITLE 18 U.S.C. § 1512) and 'influencing [a] juror generally' (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in those manners as set forth in hereinabove paragraphs 86.II through 86.VIII and further detailed in paragraphs E-86.II through E-86.VIII (together with corresponding footnotes [86] through [93] thereto) of Akers'... contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF...

LAW'; and which such additional 'predicate acts' further resulted in injuries to Akers in his businesses and/or property as detailed in hereinabove paragraph 127 and 'COUNT TWENTY-SEVEN' hereof; &

(b) On October 26 through 28, 1998, in Fayette County, Kentucky, Defendant Overstreet committed two or more 'predicate acts' of 'tampering with a witness' (in violation of TITLE 18 U.S.C. § 1512) and 'influencing [a] juror generally' (in violation of TITLE 18 U.S.C. § 1503), both being violations of TITLE 18 U.S.C. §§ 1961 & 1962, in those manners set forth in hereinabove paragraphs 110.III through 110.VII, 110.IX, & 110.X and as further detailed in paragraphs E-110.III through E-110.VII, E-110.IX, & E-110.X (together with corresponding footnotes [108] thru [126] thereto) of Akers; contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which additional 'predicate acts' resulted in further

injuries to Akers in his businesses and/or property as detailed in hereinabove paragraph 127 and 'COUNT TWENTY-SEVEN' hereof.

COUNT TWENTY-ONE - R.I.C.O. VIOLATIONS

148. On, or about, September 2, 1998, in Fayette County, Kentucky, and/or Williamson County, Tennessee, and/or through telephonic communications there between, Defendants Red Corn, Overstreet, and Williams, acting both independently and/or in consortium each with another, engaged in an intentional course of conduct directed at Akers and, with a common scheme and/or objective, participated in, and thereby committed two or more 'predicate acts' constituting a 'pattern' of 'racketeering activity', as enumerated in hereinafter subparagraph 148(a) through 148(c); having derived funds therefrom, and attempting to derive additional funds therefrom for use in acquisition of, maintaining interests in, and/or participating in conduct of the affairs of the 'enterprises' known only as 'Ernest W. Williams, Attorney-at-law' and the 'Association-in-fact' (comprised of all hereinabove 'persons' named as 'Defendants' herein, jointly and severally, and herein 'associated-in-fact'); through a 'pattern of racketeering activity'; and the 'activities' of which each such 'enterprises' having and maintaining affects on 'interstate and/or foreign commerce' at all times relevant hereto; all in violation of TITLE 18 U.S.C. §§ 1961 & 1962; and as follows:

(a) 'Blackmail' (in violation of Title 18 U.S.C. §§ 2, 3, 5, & 873, ***inter alia***, and TITLE 18 U.S.C. §§ 1961 & 1962), in that manner as set forth in hereinabove paragraphs 106 & 107 and further detailed in paragraphs E-106 & E-107 (together with footnote [106] thereto) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which 'predicate acts' further enhanced injuries to Akers in his businesses and

property as detailed in hereinabove paragraph 127 and/or 'COUNT TWENTY-SEVEN' hereof;

(b) 'Extortion' (in violation of Title 18 U.S.C. §§ 2, 3, 5, & 875, ***inter alia***; and TITLE 18 U.S.C. §§ 1961 & 1962), in that manner as set forth in hereinabove paragraphs 106 & 107 and further detailed in paragraphs E-106 & E-107 (together with footnote [106] thereto) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which 'predicate acts'...

...further enhanced injuries to Akers in his businesses and property as detailed in hereinabove paragraph 127 and 'COUNT TWENTY-SEVEN' hereof; &

(c) 'Civil rights intimidation' (in violation of Tennessee Code Annotated 39-17-309 in that manner set forth in hereinabove paragraphs 106 & 107 and further detailed in paragraphs E-106 & E-107 (together with footnote [106] thereto) of Akers' contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW' herewith; each such 'predicate act' depicted as 'COUNT TWENTY-ONE(a), (b), & (c)' hereof being violations of TITLE 18 U.S.C. §§ 1961 & 1962; and which additional "predicate acts" further enhanced injuries to Akers in his businesses and property detailed in hereinabove paragraph 127 and 'COUNT TWENTY-SEVEN' hereof.

COUNT TWENTY-TWO - FINAL OVERT ACTS/COVER-UP

149. On, or about, March 30, 2000, in Fayette County, Kentucky, Defendants Bishop, Fleming, Layne, and Witt continued in those 'conspiracies' as detailed in hereinabove 'COUNTS TWO, THREE, & FOUR'; and 'overt acts' in the furtherance thereof as detailed in 'COUNTS FIVE, SIX through TEN, and THIRTEEN'; and in concealment of those 'R.I.C.O. Violations' as detailed in hereinabove 'COUNTS FIFTEEN through TWENTY-ONE', by conspiring to, participating in, and otherwise effectuating further schemes to deprive Akers of his privileges and/or immunities secured by, ***inter alia***, Article I-Section 9 [Cl. 2], Article I-Section 10 [Cl. 1], Article IV-Section 2 [Cl. 1], and the First, Fourth, Fifth, Sixth, & Fourteenth Amendments of/to the United States Constitution, and Article 1, Sections 8 & 10 of the Constitution of Tennessee in that manner set forth in hereinabove paragraph 118 and as further detailed in footnote [1] and paragraph E-118 (together with corresponding footnote [133] thereto) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; were joined therein that 'conspiracy' and 'final overt acts' in the furtherance thereof by Defendant Goodwine on April 13, 2000, in the manner set forth in hereinabove paragraph 118 and as further detailed in footnote [1] and paragraph E-118 (together with corresponding footnote [133] thereto) of Akers' 'MEMORANDUM & MEMORANDUM OF LAW' as filed contemporaneously herewith; and which 'final overt acts' in furtherance of that 'conspiracy' as detailed in hereinabove 'COUNT ONE', and 'chain conspiracy' detailed in hereinabove 'COUNTS TWO, THREE, FOUR, & TWELVE'; further enhanced injuries to Akers in his person and property as detailed in hereinabove paragraph 127 and 'COUNT TWENTY-SEVEN' hereof; all in further violation of Title 42 U.S.C. §§ 1983 and 1985(3), ***inter alia***.

COUNT TWENTY-THREE - FINAL COVER-UP

150. On, or about, May 19, 2000, in Fayette County, Kentucky, Defendants Bishop, Red Corn, and Overstreet, ***inter alia***, conspired to covertly 'conceal' those 'conspiracies' and 'chain conspiracies' as detailed in hereinabove 'COUNTS ONE, TWO, THREE, & FOUR'; and 'overt acts' in furtherance thereof as detailed in 'COUNTS FIVE, SIX through TEN, & THIRTEEN'; and 'unlawful imprisonment' of Akers detailed in hereinabove 'COUNTS ELEVEN & FOURTEEN'; and those 'R.I.C.O. Violations'...

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detailed in hereinabove 'COUNTS FIFTEEN thru TWENTY-ONE', in the manner as detailed in hereinabove paragraph 121 through 124 and further detailed in paragraphs E-121 through E-124 (with correspondingly referenced footnotes [135] & [136] thereto) of Akers' herewith and contemporaneously-filed 'MEMORANDUM & MEMORANDUM OF LAW'; and which additional 'overt acts' further enhanced injuries to Akers in his person, property, and businesses as detailed in hereinabove paragraphs 126 & 127; all in further violation of Title 42 U.S.C. §§ 1983 and 1985(3), ***inter alia***." [D.E. #1, pages 96 - 123]

In view of the foregoing, **it is absolutely incomprehensible for any Court** to conclude that Akers can receive a fair adjudication of this case **in any Court** within the Commonwealth of Kentucky and/or that **the "ends of justice" require** Akers to **ever** return to **any jurisdiction** within the Commonwealth of Kentucky – thereby placing himself in peril of **"more of the same" tyranny and oppression** of/by the herein Defendants in violation of **TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3), *inter alia***.

ARGUMENT(S)

ARGUMENT I: **VENUE PROPERLY LIES WITH UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE - NASHVILLE DIVISION**

The District Court asserts that:

> "...the only events alleged to have occurred in [the U. S. District of Middle Tennessee] are some telephone calls to and from [Akers] and his former wife, Defendant Carolyn Bishop, in Lexington, Kentucky, which may have violated a protective order and formed the basis for contempt charges, and [Akers] extradition on October 1995 from Tennessee to Kentucky after his arrest. All other events alleged in the Complaint occurred in the Eastern District of Kentucky, including the events that led to his arrests, his trial in state court, sentence, and incarceration. Therefore, based upon the record before the Court, the Court concludes that 'a substantial part of the events or omissions giving rise to the claim[s] occurred' in the Eastern District of Kentucky. Only a few tangential acts/events are alleged to have occurred in the Middle District of Tennessee. Consequently, the Court finds that venue does not lie in [the U. S. District of Middle Tennessee] under 28 U.S.C. § 1391(b)(2)." [D.E. #79, page 3, lines 2 thru 17, clarification added]

Obviously, the District Court has misconstrued the facts – perhaps in the same manner as did the Hon. Henry R. Wilhoit, Chief Judge of the United States District Court for the Eastern District of Kentucky – due to acceptance of the Defendants'-Appellees' fraudulent misrepresentations. [see, e.g., D.E. #78 at FN6, page 8 thereof]

At the time Akers migrated back to Tennessee on September 23, 1994, there were no charges against him

whatsoever within Kentucky **or elsewhere**. [see "EXHIBIT 'V'", D.E. #3] and none could have reasonably been anticipated. All the subsequent "criminal charges" were the direct result of interstate "events", the effect and results of which were extortion, blackmail, kidnapping and/or fraudulent extradition of Akers **within the State of Tennessee** for the express purposes of the Defendants'-Appellants' violations of Akers' privileges and immunities as secured by the United States Constitution; and for which remedies are provided for pursuant to provisions of TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3) - precisely as Akers has proceeded to do as encouraged by the Congressional purpose set out in "TITLE 42 U.S.C. § 1988(a) Applicability of statutory and common law",[3] i.e.,

> "The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in their civil rights, and for their vindication, shall be

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[3] See also: **Collins v. Chandler Unified School Dist., C.A.9 (Ariz.) 1981, 644 F.2d 759, certiorari denied 102 S.Ct. 322, 454 U.S. 863, 70 L.Ed. 2d 163**, i.e., "This section is broad and unequivocal and must be liberally construed to achieve congressional purpose of encouraging compliance with and enforcement of civil rights laws."; **Dennis v. Chang, C.A.9 (Hawaii) 1980, 611 F.2d 1302**, i.e., "This section must be liberally construed to achieve congressional purpose to encourage compliance with and enforcement of civil rights laws."; **Donaldson v. O'Connor, N.D.Fla 1978, 454 F.Supp. 311**, i.e., "This section is to be construed to fulfill congressional purpose of encouraging private litigation to enforce civil rights"; & **Johnson v. Summer, N.D. Miss.1980, 488 F.Supp. 83**, i.e., "This section, providing for attorney fees in civil cases, is to be broadly and liberally construed to achieve its intended purpose to compensate counsel who represents prevailing litigants on civil rights claims and to encourage individuals to seek judicial relief, particularly those who might not otherwise attempt to vindicate their rights, and **this is particularly true where individual is faced with opposition from state, with entire resources of state government supporting litigation**." (emphasis added)

> exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect;"

The District Court **completely misses the point** that the events which occurred within the Federal District of Middle Tennessee were not "tangential" but, rather, **were pivotal to all those subsequent events occurring in the Federal District of Eastern Kentucky**.

The District Court further asserts that:

> "The only Defendant who resides, is found, has an agent, or conducts his affairs in [the U. S. District of Middle Tennessee] is Ernest Williams"; and that: "[a]pparently, [Akers] does not dispute that venue cannot lie in [the U. S. District of Middle Tennessee] as to his RICO claims against the other defendants based on 18 U.S.C. § 1965(a). Giving Plaintiff's allegations the liberal construction afforded pro se litigants, however, [Akers] maintains that venue exists here as to the remaining Defendants pursuant to 18 U.S.C. § 1965(b). As expressly stated in the statute, before a district court can summons parties from another district to answer a RICO claim, it must find that 'the ends of justice' so require. What is required to meet the 'ends of justice' requirement is not crystal clear, but, at a minimum, the Court must determine that there is no other district which has personal jurisdiction and venue over all members of the alleged RICO conspiracy" [D.E. #79, page 4, lines 2 thru 16, emphasis added]. Again, the Court errs.

Akers certainly does "dispute that venue cannot lie in [the U. S. District of Middle Tennessee] as to his RICO claims against the other defendants" and relies upon the very same TITLE 18 U.S.C. § 1965(b)[4] which the Court cites as the basis therefor. Moreover, Defendant-Appellee Allen I. Rushing resides in Pennsylvania and **there is no "other district which**

has personal jurisdiction and venue over all members of the alleged RICO conspiracy". It just cannot be disputed that the United States District Court for the Middle District of Tennessee

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[4] "The Second Circuit, in discussing an assertion of personal jurisdiction based upon 18 U.S.C. § 1965(b), stated as follows: 'This jurisdiction is not automatic but requires a showing that 'the ends of justice' so require. **There is no impediment to prosecution of a civil RICO action in a court foreign to some defendants if it is necessary...**" (citing **PT United Can Co. v. Crown Cork & Seal Co., Inc., 138 F.3d 65, 71-72 (2d Cir. 1998)**) [D.E. #79, page 5, lines 1 thru 14, emphasis added]

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at Nashville is the only proper venue for Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)".[5]

ARGUMENT II: "ORDER" TRANSFERRING VENUE FOR CASE TO EASTERN DISTRICT OF KENTUCKY IS "COLLATERAL TO THE MERITS" OF CASE

Inasmuch as those factual allegations contained within the hereinabove "STATEMENT OF FACTS (SUMMARY STATEMENT)" [supra, pages 8 through 22 hereof] will speak for themselves and it is not anticipated that even the Defendants-Appellees will contest this issue, Akers will not waste valuable time and effort in addressing it further. Suffice it to say that the District Court's "ORDER" is "collateral to the merits" of this case.

ARGUMENT III: TRANSFER OF CASE TO EASTERN DISTRICT OF KENTUCKY AT LEXINGTON WILL RESULT IN IRREPARABLE DAMAGE TO AKERS

The list of "lay witnesses" required by Akers' at trial of this case will include residents of four (4) separate and distinct Federal Districts within Kentucky; two (2) separate and distinct Federal Districts within Tennessee; and two (2) separate and distinct Federal Districts within Indiana. All "expert witnesses" required by Akers' at trial are residents of the Federal District of Middle Tennessee. Fearing reprisal by the herein Defendants-Appellees as does Akers, all "lay...

---

[5] See also: **Cooper v. Molko, D.C.Cal., 512 FR.Supp. 563 (1981)**, i.e., "In action by member of religious group against his parents, **venue was proper in Northern District of California where complaint alleged that parents came that district, participated in conspiracy** to abduct their son, and held him in motel in district for five days for deprogramming" (emphasis added); & **Jones v. Bales, D.C.Ga. 58 F.R.D. 453, affirmed 480 F.3d (1972)**, i.e. "**Where action is based on an alleged conspiracy within this section** relating to conspiracies for purpose of depriving any class of persons of equal protection of the laws, **the action may be brought in the district where any overt act occurred.**" (emphasis added)

..witnesses" who are residents of Kentucky and Indiana have made it clear that they prefer to testify in the Federal District of Middle Tennessee, at Nashville, and arrange for travel and/or per diem costs at their own expense. The yet undetermined number of lay witnesses who are residents of Middle Tennessee, and the only witnesses who can provide proof as to the "whereabouts" and "demeanor" of Akers during the time period encompassing his fraudulent "First Degree Stalking" conviction, cannot be required to travel in excess of one hundred (100) miles from the venue and it would be unfeasible for the U. S. District Court for the Eastern District of Kentucky to compel their appearance in Lexington, Kentucky. All nine (9) of Akers' expert witnesses are residents, and maintain offices in Middle Tennessee. Akers just, simply, no longer have the resources to compensate those expert witnesses for travel time, travel expense, and per diem expenses required for testimony in U. S.

District Court for the Eastern District of Kentucky at Lexington and there are no expert witnesses within Central Kentucky who can competently testify with respect to the issues raised in Akers' claims. Moreover, **every witness conceivably required by the herein Defendants-Appellees have already testified with respect to every conceivable matter** in Akers' numerous trials and/or hearings within Fayette [Kentucky] District & Circuit Courts. All such testimony is mechanically- recorded on audiotapes and/or videotapes and can be utilized by the Defendants-Appellees, to whatever extent relevant and admissible, pursuant to Rule 804 of the Federal Rules of Evidence. **Akers has no such luxury**.

This Honorable Court is asked to consider the following likely scenario in the event the "ORDER" of transfer issued by United States District Court for the Middle District of Tennessee is allowed to stand:

> (a) Akers', who is not an attorney and can no longer afford an attorney after having all his resources depleted in defense of the fraudulent charges in Kentucky and subsequent...

> ...incarceration within Kentucky, is compelled to re-enter the jurisdiction of the Defendants-Appellees for filings, depositions, pre-trial hearings, and, ultimately, for trial;
>
> (b) The Defendants-Appellees, realizing that they are in a "no win" situation, file additional fraudulent charges against Akers pursuant to the outstanding, **albeit unconstitutional**, "Domestic Violence Order" as detailed in ¶ 118 of Akers' Complaint; corresponding ¶ E-118 of Akers Memorandum; & hereinabove "COUNT TWENTY-TWO - FINAL OVERT ACTS/COVER-UP" [supra, page 21 hereof];

(c) Akers is then, **yet again, unlawfully imprisoned** within Kentucky for "God only knows" how long;

(d) Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" is then, subsequently, "DISMISSED FOR FAILURE TO PROSECUTE"; &

(e) The Defendants-Appellees escape liability and exposure of corruption.

The herein Defendants-Appellees have committed equally-dastardly acts in May through July, 1994; October through December, 1995; and May, 1994, through July, 2000, and **not even the Federal Courts can guarantee that the Defendants will not do so again** in order to prevent this case from going forward - thereby avoiding exposure of the corruption within their ranks.

Truly, **the "ends of justice" require** venue for Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" to remain in the United States District Court for the Middle District of Tennessee at Nashville.

ARGUMENT IV: ISSUES WITH RESPECT TO TRANSFER OF CASE TO EASTERN DISTRICT OF KENTUCKY AT LEXINGTON "TOO IMPORTANT" TO "BE DEFERRED UNTIL THE WHOLE CASE IS ADJUDICATED"

Akers hereby re-states and reiterates the arguments as set forth within the hereinabove "ARGUMENT III: TRANSFER OF CASE TO EASTERN DISTRICT OF KENTUCKY...

..AT LEXINGTON WILL RESULT IN IRREPARABLE DAMAGE TO AKERS" the same as if set forth herein in their entirety.

ARGUMENT V: **THE "ENDS OF JUSTICE" REQUIRE VENUE TO REMAIN IN UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE**

The District Court asserts that:

"Based upon the record, the Court finds that the 'ends of justice' do not require that the...defendants be haled before this court from other districts. First, the entire case can be litigated in the Eastern District of Kentucky. As noted previously, venue is proper in that district and said District Court has personal jurisdiction over every Defendant under Section 1965. More specifically, ...Defendant Williams who lives in Franklin, Tennessee, represented [Akers] in [the Eastern District of Kentucky] during his trial there.[6] See Int'l Shoe Co. v. Washington, 326 U. S. 310, 316 (1945)", i.e.,

> '...personal jurisdiction requires 'certain minimum contacts' with the forum state and 'that the maintenance of the suit...does not offend traditional notions of fair play and substantial justice.'

Based upon the facts and circumstances of this case, the Court finds that justice does not require that this case be litigated [in the U. S. District of Middle Tennessee]." [D.E. #79, page 6, lines 1 thru 3, emphasis added]

In response, Akers hereby re-states and reiterates the arguments as set forth within the hereinabove "ARGUMENT III: TRANSFER OF CASE TO EASTERN DISTRICT OF KENTUCKY AT LEXINGTON WILL RESULT IN IRREPARABLE DAMAGE

TO AKERS" the same as if set forth herein in their entirety. Additionally, Akers would point out that he has...

---

[6] **This assertion is just, simply, false** and is apparently the product of the fraudulent misrepresentations of herein defense counsels, Robert L. Estes [see D.E. #35, page 7, lines 12 - 14] and Kentucky Assistant Attorney General D. Brent Irvin [see D.E. #38, ¶ 5, lines 1 - 3; & D.E. #39, page 11, lines 12 - 14]. Williams was retained by Akers for the **limited purpose as detailed in ¶ 106 of Akers' Complaint & ¶ E-106 of Akers' Memorandum.** Williams has **never filed an "Entry of Appearance" on behalf of Akers;** Williams **has never appeared in any Court proceeding on behalf of Akers;** nor has Williams **ever represented Akers in any "trial".**

..made repeated efforts within his various pleadings within the United States District Court for the Middle District of Tennessee, at Nashville, to alert that Court of the ominous perils to Akers if **ever returning to anywhere** within the jurisdiction of the herein Defendants-Appellees, e.g.,

> "The Kentucky Defendants' arguments with respect to transfer of this case to Central Kentucky are nothing more than a ploy to lure Akers back to the jurisdiction of the Defendants, thereby subjecting him to "more of the same" oppression and tyranny which gave rise to Akers' claims herein and to facilitate additional violations of Title 18 U.S.C. § 1961, *et seq.*, and Title 42 U.S.C. §§ 1983 & 1985 by those Defendants [see, e.g., D.E. #78 at ¶ 2(B)(I)(iii), page 5; & D.E. #75 at ¶ 1(A)(iv), page 18]

CONCLUSION

Finally, the District Court asserts as follows:

"...even if the Court permitted Plaintiff to litigate the RICO claims [in the U. S. District of Middle Tennessee] venue would still be improper as to [Akers'] Section 1983 and Section 1985 claims because a substantial part of the events giving rise to [Akers'] claims did not occur in [the U. S. District of Middle Tennessee][7] (28 U.S.C. § 1391(b)(2)) and Title 18 U.S.C. § 1965(a) applies only to the RICO claims; not the Section 1983/Section 1985 claims. Such a course of action would not promote judicial economy and would delay and add additional hardships to the parties.[8] Therefore, for the reasons stated, the Court concludes that venue does not properly lie in [the U. S. District of Middle Tennessee] for [Akers'] RICO claims." [D.E. #79, page 6, lines 4 thru 17, emphasis added]

"For the foregoing reasons, Defendants' Motions to Transfer will be GRANTED, and this case will be TRANSFERRED to the United States District Court for the Eastern District of Kentucky. Defendants' Motions to Dismiss will be DENIED AS MOOT. ¶ An appropriate order will be entered." [D.E. #79, page 7, lines 5 thru 9, emphasis added]

Clearly, Akers recognizes that the herein case of "JAMES G. AKERS v. CAROLYN P. BISHOP, *et al*" is a "hot potato" which no one wishes to even pick up – much less hold onto and

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[7] Once again, the Court errs [see hereinabove FN5, supra, page 25 hereof].

[8] It is <u>astounding</u> that the District Court would now be concerned about "hardships" to the herein Defendants-Appellees in view of the history of this case, <u>with no regard</u> to <u>further hardships</u> upon Akers and his <u>witnesses</u>.

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deal with. Nonetheless, that is <u>precisely</u> what the Constitution and Laws of the United States of America <u>require</u>. That is all Akers is asking the Federal Courts to do in this case – to enforce

the Constitution and Laws of the United States of America and allow "due process of law" to follow its designed course.

WHEREFORE, the Plaintiff-Appellant, James G. Akers, **without counsel**, asks and prays of this Honorable Court to reverse the "ORDER" granting transfer of this action to the United States District Court for the Eastern District of Kentucky, at Lexington, as entered on September 18, 2001, by the Honorable Robert L. Echols, Chief Judge for the United States District for the Middle District of Tennessee - Nashville Division, and remand with instructions that "venue" shall remain therein in order that the "ends of justice" may be effectively served.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Appellant
POST OFFICE BOX 3648
BRENTWOOD, TENNESSEE 37024
TELEPHONE: 615/834-2843

* * * * * * * * * * * * * * * * *

CERTIFICATION OF COMPLIANCE

COMES THE PLAINTIFF-APPELLANT, James G. Akers, and hereby certifies that the foregoing "FINAL BRIEF FOR APPELLANT" fully complies with FRAP 32(a)(7)(C).

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Appellant

CERTIFICATE OF SERVICE

COMES THE AFFIANT, Dorothy M. Mackin, and hereby certifies that: (1) I am not a party to the civil action styled "**JAMES G. AKERS, Plaintiff-Appellant, v. CAROLYN P. BISHOP, et al, Defendants-Appellees.**"; (2) I am a citizen of the United States of America and the State of Tennessee therein; (3) I am over the age of 21; (4) to the best of my knowledge, information, and belief, I am duly qualified to execute service of process on behalf of Appellant, James G. Akers; and (5) I have, on the date last written and notarized hereinbelow, served a true, accurate, and complete copy of the foregoing "**FINAL BRIEF FOR APPELLANT**" pursuant to **6 CIR. R. 28(a); 6 CIR. R 31(a); & FRAP 32(a), (b)**, via "**UNITED STATES MAIL-FIRST CLASS**", postage pre-paid, upon the Defendants-Appellees named therein and/or their legal counsel in that manner as follows:

(a) CAROLYN P. BISHOP:
Served Attorney: Leslie Rosenbaum, Esquire
300 Lexington Building
201 West Short Street
Lexington, Kentucky 40507

(b) DORIS FLEMING:
Served Attorney: David B. Scott, Esquire
Ortale, Kelley, Herbert & Crawford
P. O. Box 198985
Nashville, Tennessee 37219-8985

(c) ALLEN I. RUSHING:
Served Defendant: Allen I. Rushing
112 Oak Ridge Lane
Dallastown, Pennsylvania 17313

(d) CBT DOES 1 THRU 40:

[Service inappropriate without leave of Court]

(e) TODD M. LAYNE:
Served Attorney: Robert L. Estes, Esquire
Stewart, Estes & Donnell
SunTrust Center, Suite 1401
424 Church Street
Nashville, Tennessee 37219

(f) DONALD SHANNON:
Served Attorney: Robert L. Estes, Esquire
Stewart, Estes & Donnell
SunTrust Center, Suite 1401
424 Church Street
Nashville, Tennessee 37219

(g) JERRY L. KELLY:
Served Attorney: Augustus S. Herbert, Esquire
Middleton Reutlinger
2500 Brown & Williamson Tower
Louisville, Kentucky 40202

(h) SCC DOES 1 THRU 50:

[Service inappropriate without leave of Court]

(i) JOHN J. VAUGHAN, M.D.:
Served Attorney: William W. Allen, Esquire
201 West Short Street
Lexington, Kentucky 40507-1269

(j) THOMAS L. CLARK:
Served Attorney: D. Brent Irvin, Asst. Atty. General
Commonwealth of Kentucky
Capitol Building, Suite 118
700 Capitol Avenue
Frankfort, Kentucky 40601

(k) KATHERINE H. WITT:
Served Attorney: Bennett E. Bayer, Esquire
Landrum & Shouse
P. O. Box 951
Lexington, Kentucky 40588-2424

(l) FCS DOES 1 THRU 30:

[Service inappropriate without leave of Court]

(m) PAMELA MILLER:
Served Attorney: Theresa L. Holmes, Dir. of Litig.
Lexington-Fayette Urban Co. Govt.
200 East Main Street
Lexington, Kentucky 40507

(n) LFG DOES 1 THRU 60:

[Service inappropriate without leave of Court]

(o) LOU A. RED CORN:
Served Attorney: D. Brent Irvin, Asst. Atty. General
Commonwealth of Kentucky
Capitol Building, Suite 118
700 Capitol Avenue
Frankfort, Kentucky 40601

(p) CAO DOES 1 THRU 20:

[Service inappropriate without leave of Court]

(q) FCC DOES 1 THRU 10:

[Service inappropriate without leave of Court]

(r) REBECCA M. OVERSTREET:
Served Attorney: D. Brent Irvin, Asst. Atty. General
Commonwealth of Kentucky
Capitol Building, Suite 118
700 Capitol Avenue
Frankfort, Kentucky 40601

(s) CINDY G. SWARTZ:
Served Attorney: D. Brent Irvin, Asst. Atty. General
Commonwealth of Kentucky
Capitol Building, Suite 118
700 Capitol Avenue
Frankfort, Kentucky 40601

(t) ERNEST W. WILLIAMS:
Served Attorney: Darrell G. Townsend, Esquire
Howell & Fisher, PLLC
300 James Robertson Parkway
Nashville, Tennessee 37201-1107

(u) TODD D. FERGUSON:
Served Attorney: D. Brent Irvin, Asst. Atty. General
Commonwealth of Kentucky
Capitol Building, Suite 118
700 Capitol Avenue
Frankfort, Kentucky 40601

(v) PAMELA R. GOODWINE:
Served Attorney: D. Brent Irvin, Asst. Atty. General
Commonwealth of Kentucky
Capitol Building, Suite 118
700 Capitol Avenue
Frankfort, Kentucky 40601

s/ Dorothy M. Mackin
DOROTHY M. MACKIN,
Agent for Appellant
c/o Post Office Box 3648
Brentwood, Tennessee 37024

STATE OF TENNESSEE)
)
) **ss.**
)
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove Dorothy M. Mackin has personally appeared before me on this, the 11th day of January, 2002,* has acknowledged the foregoing, and subscribed her signature thereto in my presence.

s/ Sherrie F. Hicks
NOTARY PUBLIC, State-at-large

My Commission Expires: 3/26/2005

* In error (should have been "February, 2002,".

 EXHIBIT "USSC-06"

FILED
JAN 24 2002
Leonard Green, Clerk

No. 01-6243

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES G. AKERS,)
)
Plaintiff-Appellant)
v.) **ORDER**
)
)
CAROLYN P. BISHOP, et, al)
)
Defendants-Appellees)

Not for Recommendation For Full-Text Publication.
Sixth Circuit Rule 28(g) Limits citation to specific situation. Please see rule 28(g) before citing in a Proceeding in a court in the Sixth Circuit limited, a copy must be served on other parties and the court. This notice is to be prominently displayed if this decision is reproduced.

Before: KENNEDY and DAUGHTRY, Circuit Judges; BELL, Chief District Judge.*

This matter is before the court upon consideration of motions of the appellees to dismiss the appeal on the basis that the order transferring the case to a different district court is not a final or appealable order. The appellant responded arguing that the order is appealable under the collateral-order doctrine. *See Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S., 541, 546-47 (1949). The appellant also filed a motion seeking reconsideration of the clerk's letter holding the briefing schedule in abeyance pending a ruling on the motions to dismiss.

A review of the documents before the court indicates that the appellant filed a civil complaint in the United States District

Court for the Middle District of Tennessee. The court transferred the case to the United States District for the Eastern District of Kentucky. Appellant appealed the order transferring the case.

This court lacks jurisdiction over this appeal. The order transferring the case is not appealable. *See SongBryd, Inc. v. Estate of Grossman*, 206 F.3d 172, 176(2d Cir), *cert. denied* 531 U.S. 824 (2000); *Lemon v. Druffel*, 253 F.2d 680, 683 (6th Cir. 1958). A ruling on a motion to...

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*The Honorable Robert Holmes Bell, Chief United States District Judge for the Western District of Michigan, sitting by designation.

...transfer is not appealable under the collateral order exception. *FDIC v. McGlamery*, 74, F.3d 218, 222(10th Cir. 1996); *Middlebrooks v. Smith*, 735 F.2d 431,432(11th Cir. 1984).

It is ordered that the appeal be dismissed. The motion for reconsideration is denied as moot.

ENTERED BY ORDER OF THE COURT

s/ Leonard Green, Jr.
Clerk

[END OF DOCUMENT]

FILED
DEC 26 2001
LEONARD GREEN, Clerk

C.O.A. CASE NUMBER: 01-6243
IN THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

JAMES G. AKERS,	)	
	)	
Plaintiff-Appellant,	)	**RESPONSE AND**
	)	**OBJECTIONS TO:**
	)	MOTION [OF APPELLEES
	)	PAMELA MILLER AND
v.	)	LEXINGTON-FAYETTE
	)	URBAN COUNTY
	)	GOVERNMENT] TO
	)	DISMISS AND [THE
	)	ACCOMPANYING] MOTION
	)	TO STAY PROCEEDINGS
CAROLYN P. BISHOP; et al,	)	PENDING MOTIONS TO
	)	DISMISS
Defendants-Appellees.)		

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE - NASHVILLE DIVISION

COMES THE PLAINTIFF-APPELLANT, James G. Akers (hereinafter "Akers'), **without counsel**, and, in strict accordance with Title 28 U.S.C. § 1654 in conjunction with Rule 26 and U.S.C.A.6 Combined Rule 27(e) of the Federal Rules of Appellate Procedure, files with this Honorable Court the hereinafter "**RESPONSE**" to the "NOTICE OF ADOPTION OF APPELLEES' MOTIONS TO DISMISS; MOTION TO STAY BRIEFING SCHEDULE PENDING DISPOSITION OF MOTION TO DISMISS AND MOTION TO STAY FURTHER

PROCEEDINGS PENDING MOTIONS TO DISMISS" as served by Defendant-Appellee Pamela Miller (hereinafter "Miller") and/or the Lexington-Fayette Urban County Government (hereinafter "LFUCG") on December 11, 2001, and received by Akers at Post Office Box 3648; Brentwood, Tennessee 37024 on December 13, 2001.

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1. In her latest desperate attempt to escape her formidable liabilities as detailed in Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" as filed in United States District Court for the Middle District of Tennessee, Nashville Division, on November 21, 2000, the Defendant-Appellee Pamela Miller:

> (A) Appears to now fraudulently enjoin the Lexington-Fayette Urban County Government (LFUCG) in this civil action and appeal ***sub judice*** [page 1, ¶ 1];
>
> (B) "Concurs with the motions" and "adopts the pleadings" as previously filed herein by Appellees Katherine Witt, John J. Vaughan, M.D., Allen I. Rushing, Doris Fleming, Todd M. Layne, & Donald Shannon [page 1, ¶ 2, lines 1 thru 4];
>
> (C) "Concurs", "adopts", and incorporates the same "as if fully set forth [therein]" an unidentified "motion to stay further proceedings pending motions to dismiss and to stay filing of briefs pending the motions to dismiss" [page 1, ¶ 2, lines 4 thru 7]; &
>
> (D) "Requests that the appeal of the Appellant, James G. Akers, be dismissed and that further proceedings be stayed until disposition on the motions to dismiss and to any and all other relief to which the Appellee is entitled" [page 1, ¶ 3].

2. In response, Akers hereby re-states, reiterates, and supplements his responses with respect thereto as follows:

On November 21, 2000, Akers filed and served his "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" together

with an extensive and contemporaneously- filed "MEMORANDUM & MEMORANDUM OF LAW" and "APPENDIX/ RELEVANT EXHIBITS" in support thereof (hereinafter "Akers' Complaint", "Akers' Memorandum", & "Akers' Appendix", respectively) [D.E. #1, 2 & 3, respectively],

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in the United States District Court for the Middle District of Tennessee, Nashville Division, in which Akers asserted that, ***inter alia,*** beginning in about mid-July, 1993, and continuing through July 7, 2000:

> (a) The named Defendants-Appellees engaged in various "conspiracies" and/or "chain conspiracies" in violation of TITLE 42 U.S.C. § 1985 [see Akers' "BRIEF FOR APPELLANT" filed herein on November 13, 2001, ***viz,*** "COUNT ONE" through "COUNT FOUR", pages 8 through 11; "COUNT TWELVE", page 13; & "COUNT TWENTY-THREE, page 22, for enumerations] **and, in the furtherance and concealment thereof;**
>
> (b) The named Defendants-Appellees committed numerous specific "overt acts" in violation of TITLE 42 U.S.C. § 1983 [see Akers' "BRIEF FOR APPELLANT" filed herein on November 13, 2001, ***viz,*** "COUNT FIVE" through "COUNT ELEVEN", pages 11 through 13; "COUNT THIRTEEN" & "COUNT FOURTEEN", page 14; and "COUNT TWENTY-TWO" & "COUNT TWENTY-THREE", pages 21 & 22 for enumerations] **and, in the course thereof;**
>
> (c) The named Defendants-Appellees committed numerous predicate acts in violation of TITLE 18 U.S.C. § 1961, ***et seq.***, as are all detailed within Akers' Complaint and Memorandum in support [see Akers' "BRIEF FOR APPELLANT" filed herein on November 13, 2001, ***viz,*** "COUNT FIFTEEN" through "COUNT TWENTY-ONE", pages 8 through 11, for enumerations].

(d) With the exception of Defendant-Appellee Vaughan's denial that "he was a party to any alleged conspiracy [or] engaged in any unlawful conduct" [see D.E. #51 at ¶ II(B)(1), page 2, lines 6 & 7]; Defendant-

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Appellee Kelly's denial that he has had any contact with Akers since September 23, 1994 [see D.E. #76, page 2, lines 8 & 9]; & Defendant-Appellee Bishop's denial of "the substantive allegations against her with the exception of any items which appear of public record" [see D.E. #83 at ¶ 3],[1] **not <u>even a single</u> Defendant-Appellee** has attempted to controvert **<u>even a single</u> averment** contained within Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" inasmuch as virtually all such averments are mechanically-recorded on audiotapes and/or videotapes and the Defendants-Appellees **<u>cannot deny the allegations against them</u>** without **subjecting themselves to still further sanctions and/or penalties under Federal Law.**

On September 18, 2001, the Honorable Robert L. Echols, Chief Judge for the United States District for the Middle District of Tennessee at Nashville, entered his "ORDER" denying the Defendants' various "MOTION[S] TO DISMISS" but granting transfer of this action to the United States District Court for the Eastern District of Kentucky at Lexington [D.E. #80 and accompanying "MEMORANDUM", D.E. #79].

As a matter of right, Akers appealed pursuant to Rules 4 & 28(a) of the Federal Rules of Appellate Procedure together with the "Collateral Order Doctrine" as set out in **<u>Cohen v. Beneficial Loan Corp.</u>, 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)**, in which the United States Supreme Court held that "...**certain orders <u>were immediately</u>**

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[1] Even so, the remaining factual allegations would likely be sufficient to obtain a "Summary Judgement" against these Defendants-Appellees - **notwithstanding the fraudulent misrepresentations contained within their said pleadings.** [see D.E. #68, D.E. #69, & D.E. #78, respectively]

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appealable (1) if they were **collateral to the merits**; (2) if **denial of an immediate appeal would result in irreparable damage to the party seeking review**; and (3) if the issue raised was "**too important**" to "**be deferred until the whole case is adjudicated.**"[2]

The Defendants-Appellees do not have meritorious defenses to Akers' claims or appeal and, if they did, they should have presented those in accordance with the "Briefing Schedule" as set by this Honorable Court pursuant to Rule 31 of the Federal Rules of Appellate Procedure or, otherwise, now prepare for trial and allow "due process of law" to follow its designed course.

In specifically the same hereinabove order as Defendant-Appellee Miller's pleadings, Akers further responds as follows:

> (A) In Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" as filed in United States District Court for the Middle District of Tennessee, at Nashville, on November 21, 2000, "it is obvious that Akers has not named either the Lexington-Fayette [Kentucky] Urban County Government **or** the innocent taxpayers thereof or the Defendant Miller in her official capacity. The fact that Defendant Miller has committed unconstitutional and otherwise unlawful acts in her

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[2] See also, e.g., **Firestone Tire & Rubber Co. v. Risjord, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981)**, i.e., "Because the litigation from which the instant petition arises had not reached final judgement at the time the notice of appeal was filed, the order...is appealable under § 1291 **only if it falls within the *Cohen* doctrine.**" (emphasis added); **Abney v. United States, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977)** at FN4, i.e., "Of course, Cohen's **collateral-order exception**

is equally applicable in both civil and criminal proceedings." (emphasis added); and **Armstrong v. McAlpin, 625 F.2d 433, C.A.N.Y. (1980)**, citing **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)** in which the Supreme Court held that "...certain orders were **immediately appealable** (1) if they were collateral to the merits; (2) if denial of an immediate appeal would result in irreparable damage to the party seeking review; and (3) if the issue raised was "too important" to "be deferred until the whole case is adjudicated."

'private capacity' which resulted in specific acts in the furtherance thereof by other persons acting in their individual 'official capacities', **without jurisdiction**, and/or other 'persons' in a purely private capacity, does not relieve Miller of her liabilities as a 'person' under Title 18 U.S.C. §§2, 3, 4, 5, 1964(c); Title 42 U.S.C. §§ 1983 & 1985(3); and those other related statutory provisions cited in Akers' Memorandum" [see, e.g., D.E. #46 at ¶ 4, page 4, line 25, through page 5, line 10]. However, inasmuch as Miller and her purported counsels, Edward W. Gardner (previous Director of Litigation for LFUCG) and Theresa L. Holmes (current "Acting Director" of Litigation for LFUCG) have thus far chosen to misappropriate and/or misuse revenues collected from innocent taxpayers of Fayette County, Kentucky, for the illicit purpose of defending Miller for **unlawful acts committed in her private capacity**, Akers has no objection if those innocent taxpayers themselves do not. An "Amended Complaint" will be tendered accordingly.

(B) Miller "concurs with the motions" and "adopts the pleadings" as previously filed herein by Appellees Katherine Witt, John J. Vaughan, M.D., Allen I. Rushing, Doris Fleming, Todd M. Layne, & Donald Shannon. In the same chronological order in which those "motions"/"pleadings" and Akers' "responses" thereto were served, Akers re-states and reiterates his responses thereto as follows:

(i) On October 23, 2001, Defendant-Appellee Jerry L. Kelly filed and served his

"MOTION OF APPELLEE, JERRY L. KELLY, TO DISMISS APPEAL FOR LACK OF JURISDICTION", asserting that Akers' hereinabove...

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...appeal should be dismissed in that it was not pursuant to a "final order" and should be dismissed pursuant to Title 28 U.S.C. § 1291. [see "EXHIBIT 'CA6-02'", page 6 of 8, Item #6]

(ii) On October 30, 2001, Plaintiff-Appellant Akers served his "RESPONSE TO: 'MOTION OF APPELLEE, JERRY L. KELLY, TO DISMISS APPEAL FOR LACK OF JURISDICTION'", pointing out that Kelly misapprehended Title 28 U.S.C. § 1291 and the "treatise" set forth in 17 Moore's Federal Practice § 111.60[1] in context with the "Collateral Order Doctrine" as set out in **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)**. [see "CA6-02'", page 6 of 8, Item #10]

(iii) On November 6, 2001, Defendant-Appellee Katherine H. Witt served her "MOTION TO DISMISS APPEAL/REPLY TO RESPONSE OF AKERS", echoing Kentucky Assistant Attorney General D. Brent Irvin's citation of this Honorable Court's "unpublished decision" in **BLUE ASH DEVELOPMENT, INC., and Royalton Resources, Inc. Plaintiffs-Appellants, v. Susan E POLAN, Basil A. Diamond, and Susan I. Murray, Defendants-Appellees, 74 F.3d 1240, 1996 WL 1828 (6th CIR.(Ky))** as, substantially, the grounds therefor. [see "EXHIBIT 'CA6-02'", page 6 of 8, Item #14]

(iv) As well on November 6, 2001, Defendant-Appellee Doris Fleming served her

"MOTION OF APPELLEE, DORIS FLEMING, TO DISMISS APPEAL FOR LACK OF JURISDICTION" [see "EXHIBIT 'CA6-02'", page 7 of 8, Item #2] based upon virtually-identical grounds as those asserted by...

...Defendant-Appellee Katherine H. Witt in her hereinabove "MOTION TO DISMISS APPEAL/ REPLY TO RESPONSE OF AKERS" and Kentucky Assistant Attorney General D. Brent Irvin's hereinabove "MOTION OF STATE APPELLEES TO DISMISS APPEAL FOR LACK OF JURISDICTION". [see "EXHIBIT 'CA6-02'", page 6 of 8, Item #12]

(v) On November 10, 2001, Plaintiff-Appellant James G. Akers served his "RESPONSE TO: 'MOTION OF [Defendants-Appellees Thomas L. Clark, Todd D. Ferguson, Pamela R. Goodwine, Rebecca M. Overstreet, Lou A. Red Corn, and Cindy G. Schwartz] TO DISMISS APPEAL FOR LACK OF JURISDICTION'", pointing out that the "State" Defendants-Appellees and their purported counsel, Kentucky Assistant Attorney General D. Brent Irvin, had both misconstrued and misapplied this Honorable Court's "unpublished decision" in **BLUE ASH DEVELOPMENT, INC., and Royalton Resources, Inc. Plaintiffs-Appellants, v. Susan E POLAN, Basil A. Diamond, and Susan I. Murray, Defendants-Appellees, 74 F.3d 1240, 1996 WL 1828 (6th CIR.(Ky))** as the asserted the grounds therefor in context with the "Collateral Order Doctrine" as set out in **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed.**

1528 (1949). [see "EXHIBIT 'CA6-02'", page 7 of 8, Item #5]

(vi) As required by [the] "BRIEFING SCHEDULE" issued by the Court on October 16, 2001, **together with Rule 31 of the Federal Rules of Appellate Procedure**, on November 12, 2001, Appellant Akers served his "BRIEF FOR

APPELLANT" which contained indisputable arguments and authorities in support thereof with respect to the issue of whether his herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" must remain in the United States District Court for the Middle District of Tennessee, Nashville Division. [see "EXHIBIT 'CA6-02'", page 7 of 8, Item #6]

(vii) Thereafter, the Defendants-Appellees Todd M. Layne and Donald Shannon served an **undated** "MOTION OF APPELLEES, TODD M. LAYNE AND DONALD SHANNON, TO DISMISS APPEAL FOR LACK OF JURISDICTION" [see "CA6-02'", page 7 of 8, Item #8] **in identical manner – even with respect to the very same clerical errors**, ***viz***, "28 U.S.C. § 406" & "28 U.S.C. § 291" - further "echoing" the arguments set out in the "MOTION TO DISMISS APPEAL/REPLY TO RESPONSE OF AKERS" of Defendant-Appellee Katherine H. Witt and the same was received by Akers at Post Office Box 3648; Brentwood, Tennessee 37024 on November 19, 2001.

(viii) On November 16, 2001, Defendants-Appellees Thomas L. Clark, Todd D. Ferguson, Pamela R. Goodwine, Rebecca M. Overstreet, Lou A. Red Corn, and Cindy G. Schwartz, by

and through their purported counsel, Kentucky Assistant Attorney General D. Brent Irvin, served their "...MOTION TO STAY BRIEFING SCHEDULE PENDING DISPOSITION OF MOTIONS TO DISMISS", again asserting defenses of "judicial and prosecutorial immunities" and arguing that "judicial economy will be served"..."if they are not burdened with

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responding to a frivolous appeal on the merits if this Court agrees it lacks jurisdiction over the appeal in the first place". **Inexplicably, this "motion" was not entered on this Court's Docket until 11/27/01**. [see "EXHIBIT 'CA6-02'", page 7 of 8, Item #12]

(ix) On November 19, 2001, Defendants-Appellees John J. Vaughan, M.D., and Allen I. Rushing served their "MOTION OF APPELLEES JOHN J. VAUGHAN, M.D., AND ALLEN I. RUSHING TO DISMISS APPEAL", asserting that Akers' hereinabove appeal should be dismissed pursuant to Title 28 U.S.C. § 1291 and classifying Akers' herein appeal as, essentially, "[a petition for] an extraordinary writ". [see "EXHIBIT 'CA6-02'", page 7 of 8, Item #10]

(x) On November 26, 2001, Akers timely served his "RESPONSE & OBJECTIONS TO: "[Defendants-Appellees Thomas L. Clark, Todd D. Ferguson, Pamela R. Goodwine, Rebecca M. Overstreet, Lou A. Red Corn, and Cindy G. Schwartz] MOTION TO STAY BRIEFING SCHEDULE PENDING DISPOSITION OF MOTIONS TO DISMISS" **in strict accordance with Rules 26 & 6 CIR. R. 27(e)(2) of the Federal Rules of Appellate Procedure**, specifically addressing, responding to and "OBJECTING" to

all those theretofore issues raised in the Defendants-Appellees' various motions with respect to the dismissal of Akers' herein appeal and/or various motions to stay the briefing schedule pending disposition of motions to dismiss. [see "EXHIBIT CA6-05'" appended hereto]

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(xi) On November 27, 2001, Deputy Clerk of the United States Court of Appeals for the Sixth Circuit, Diane Schnur, issued her "letter/order/directive" placing the "Briefing Schedule" as previously issued by the Court "in abeyance pending the disposition of ...Appellee's motion to dismiss for lack of jurisdiction"; to which,

(xii) Akers timely served his "MOTION FOR RECONSIDERATION" on December 7, 2001,[3] in which all theretofore issues raised by the Defendants-Appellees were specifically and extensively addressed in the form of "responses" and/or objections thereto and pointing out to this Honorable Court that the herein Defendants-Appellees are engaged in what can only be fairly termed as "delay tactics" utilizing nothing more than the strategies of confusion and delay.

(xiii) Kentucky's Assistant Attorney General, D. Brent Irvin has already signaled his intent to continue to thwart the "due process" sought by Akers in this civil action by way of Irvin's threat, *viz*, "[t]he State Defendants will renew their motion to dismiss this case after the remand" [see "EXHIBIT 'CA6-06'", page 2, lines 18 & 19]. Apparently, the conspiracies alleged in Akers' herein "CIVIL ACTION PURSUANT TO:

TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" filed in United States District Court for the Middle District of Tennessee, Nashville Division, on November 21, 2000, ...

---

[3] Akers hereby acknowledges that the "APPENDIX" included therewith was defective due to a mechanical malfunction of the copier utilized [see EXHIBIT 'CA6-02'", page 7 of 8, Item #10]. The herewith "APPENDIX" is intended to supersede, in its entirety, the "APPENDIX" served as an integral part of Akers' "MOTION FOR RECONSIDERATION" on December 7, 2001. Akers humbly apologizes to this Honorable Court and all parties for any inconvenience as the result thereof.

...continue unto this very day and it is now clear that **the Defendants-Appellees will stop at nothing to prevent or delay this case from proceeding - without regard for "judicial economy"; the First Amendment to the United States Constitution; any of the other Constitutional, Statutory, or Common Law provisions as cited within Akers' Complaint & Memorandum; or any of the "authorities" cited in support thereof.** Again, an "Amended Complaint" will be tendered accordingly by Akers.

(C) Defendant-Appellee Miller and/or the Lexington-Fayette Urban County Government "concurs", "adopts", and incorporates the same "as if fully set forth [therein]" an unidentified "motion to stay further proceedings pending motions to dismiss and to stay filing of briefs pending the motions to dismiss". It can only be presumed that they refer to the "motion" of Defendants-Appellees Thomas L. Clark, Todd D. Ferguson, Pamela R. Goodwine, Rebecca M. Overstreet,

Lou A. Red Corn, and Cindy G. Schwartz, by and through their purported counsel, Kentucky Assistant Attorney General D. Brent Irvin, as detailed in hereinabove ¶ 2(B)(vii). **In response**, Akers hereby re-states and reiterates his responses thereto as detailed within his "RESPONSES & OBJECTIONS [THERETO]" as detailed in hereinabove ¶ 2(B)(ix).

(D) Defendant-Appellee Miller and/or the Lexington-Fayette Urban County Government "requests that the appeal of the Appellant, James G. Akers, be dismissed and that further proceedings be stayed until disposition on the motions to dismiss and to any and all other relief to which the Appellee is entitled" [page 1, ¶ 3]. **In response**, Akers hereby re-states, reiterates, and amends his response and objections thereto as follows:

(a) In essence, Defendant-Appellee Miller and/or the Lexington-Fayette Urban County Government, by and through their purported counsel, Acting Director of Litigation for the Lexington-Fayette [Kentucky] Urban County Government, Theresa L. Holmes, ask this Honorable Court to grant a continuance of the "Briefing Schedule" which has been set by this Honorable Court and which has already been complied with by Akers by means of his timely "BRIEF FOR APPELLANT", as properly served on November 12, 2001, and filed with the Court on November 13, 2001. As the bases for her "motion", Defendant-Appellee Miller:

(i) asserts that "[m]any of the named appellees...have filed potentially dispositive motions to dismiss the appeal on the ground that this Court lacks jurisdiction to consider an appeal from an interlocutory order transferring Akers' case from the United States District Court for the Middle District of Tennessee to the United States District Court for the Eastern District of Kentucky;

(ii) minimize that "[Akers] has responded to the "motions [to dismiss]", ...essentially arguing he cannot get a fair trial in Kentucky";

iii) argue that "judicial economy will be served if this Court stays the current briefing schedule until the Court rules on the pending motions to dismiss";

(iv) **again** argue that they have "absolute immunities and prosecutorial immunities from suit which shields them from defending Akers' underlying claims";

(v) label Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)"as a "frivolous but vexatious civil rights action"; &

(vi) assert that they should not be "burdened with responding...

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...to a frivolous appeal on the merits if this Court agrees that it lacks jurisdiction over the appeal in the first place."

(b) **In the same hereinabove order** as the pleadings presented now by Miller in the same manner as previously presented by Defendants-Appellees Thomas L. Clark, Todd D. Ferguson, Pamela R. Goodwine, Rebecca M. Overstreet, Lou A. Red Corn, and Cindy G. Schwartz, **Akers hereby responds and/or objects thereto** as follows:

(i) Indeed, "[m]any of the named appellees have filed [purportedly] dispositive motions to dismiss the appeal on the ground (sic) that this Court lacks jurisdiction to consider an appeal from an interlocutory order transferring Akers' case from the United States District Court for the Middle District of Tennessee to the United States District Court for the Eastern District of Kentucky" pursuant to provisions of Title 28 U.S.C. § 1291. However, Akers maintains that the Defendants-

Appellees misapprehend Title 28 U.S.C. § 1291 in context with the "Collateral Order Doctrine" as set forth in **Clemence v. Clemence, 8 Kan. App.2d 377, 658 P.2d 368 (1983)**, i.e., "'Collateral order' doctrine allows appeal from interlocutory order which conclusively determines issue completely separate from merits of action, and which cannot be given effective review on appeal from subsequent final judgement; such order is, for purposes of appellate jurisdiction, 'final order'"; **Firestone Tire & Rubber Co. v. Risjord, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981)**, i.e., "Because the litigation from which the instant petition arises had not reached final judgement at the time the notice of appeal was filed, the order is appealable under § 1291 **only if it falls within the *Cohen* doctrine**." (emphasis added); ...

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...**Abney v. United States, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977)** at FN4, i.e., "Of course, Cohen's **collateral-order exception** is equally applicable in both civil and criminal proceedings." (emphasis added); and **Armstrong v. McAlpin, 625 F.2d 433, C.A.N.Y. (1980)**, citing **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)** in which the Supreme Court held that "...certain orders were **immediately appealable** (1) if they were collateral to the merits; (2) if denial of an immediate appeal would result in irreparable damage to the party seeking review; and (3) if the issue raised was "too important" to "be deferred until the whole case is adjudicated."

(ii) Consistent with their history of extracting minute and/or subordinate excerpts from the Constitution and Laws of the United States of America **as well as the** Constitution and Laws of the Commonwealth of Kentucky and, then, exacerbating the context thereof for their own convenience and/or exploitation, the Defendants-Appellees" minimize that

"[Akers] has responded to the "motions [to dismiss]", ...essentially arguing he cannot get a fair trial in Kentucky". **The Appellees are only attempting to divert this Honorable Court's attention away from the real issues** as presented in ARGUMENT(S) III & V of Akers' "BRIEF FOR APPELLANT" as filed with the Court on November 13, 2001, i.e.:

"The list of "lay witnesses" required by Akers' at trial of this case will include residents of four (4) separate and distinct Federal Districts within Kentucky; two (2) separate and distinct Federal Districts within Tennessee; and two (2) separate and distinct Federal Districts within Indiana. All 'expert witnesses' required by Akers at trial are residents of the Federal District of Middle Tennessee. Fearing reprisal by the herein Defendants-Appellees as does Akers, all 'lay witnesses' who are residents of Kentucky and Indiana have made it clear that they prefer to testify in the Federal District of Middle...

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...Tennessee, at Nashville, and arrange for travel and/or per diem costs at their own expense. The yet undetermined number of lay witnesses who are residents of Middle Tennessee, and the only witnesses who can provide proof as to the 'whereabouts' and 'demeanor' of Akers during the time period encompassing his fraudulent 'First Degree Stalking' conviction, cannot be required to travel in excess of one hundred (100) miles from the venue and it would be unfeasible for the U. S. District Court for the Eastern District of Kentucky to compel their appearance in Lexington, Kentucky. All nine (9) of Akers' expert witnesses are residents, and maintain offices in Middle Tennessee. Akers just, simply, no longer [has] the resources to compensate those expert witnesses for travel time, travel expense, and per diem expenses

required for testimony in U. S. District Court for the Eastern District of Kentucky at Lexington and there are no expert witnesses within Central Kentucky who can competently testify with respect to the issues raised in Akers' claims. Moreover, every witness conceivably required by the Defendants-Appellants have already testified with respect to **every conceivable matter** in Akers' numerous trials and/or hearings within Fayette [Kentucky] District and Circuit Courts. All such testimony is mechanically-recorded audiotapes and/or videotapes and can be utilized, to the extent relevant and admissible, pursuant to Rule 804 of the Federal Rules of Evidence. Akers has no such luxury.

This Honorable Court is asked to consider the following likely scenario in the event the 'ORDER' of transfer issued by United States District Court for the Middle District of Tennessee is allowed to stand:

> (a) Akers', who is not an attorney and can no longer afford an attorney after having all his resources depleted in defense of the fraudulent charges in Kentucky and subsequent incarceration within Kentucky, is compelled to re-enter the jurisdiction of the herein Plaintiffs-Appell[ees] for filings, depositions, pre-trial hearings, and, ultimately, for trial;
>
> (b) The Defendants-Appellees, realizing that they are in a "no win" situation, file additional fraudulent charges against Akers pursuant to the outstanding, **albeit unconstitutional**, "Domestic Violence Order" as detailed in ¶ 118 of Akers' Complaint; corresponding ¶ E-118 of Akers Memorandum; & hereinabove "COUNT TWENTY-TWO - FINAL OVERT ACTS/COVER-UP" [supra, page 21 thereof];
>
> (c) Akers is then, **yet again, unlawfully imprisoned** within Kentucky for 'God only knows' how long;

(d) Akers' herein 'CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" is then, subsequently, "DISMISSED FOR FAILURE TO PROSECUTE'; &

(e) The herein Defendants-Appellees escape liability and exposure of corruption.

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The herein Defendants-Appellees have comitted equally-dastardly acts in May through July, 1994; October through December, 1995; and May, 1994, through July, 2000, and not even the Federal Courts can guarantee that those same Defendants-Appellees will fail to do so again in order to prevent this case from going forward - thereby avoiding exposure of the corruption within their ranks.

Truly, the 'ends of justice' require venue for Akers' 'CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)' to remain in the United States District Court for the Middle District of Tennessee at Nashville. ¶...Additionally, Akers would point out that he has made repeated efforts within his various pleadings within the United States District Court for the Middle District of Tennessee, at Nashville, to alert that Court of the ominous perils to Akers if **ever** returning to **anywhere** within the jurisdiction of the herein Defendants-Appell[ees], e.g.,

> 'The Kentucky Defendants' arguments with respect to transfer of this case to Central Kentucky are nothing more than a ploy to lure Akers back to the jurisdiction of the Defendants, thereby subjecting him to 'more of the same' oppression and tyranny which gave rise to Akers' claims herein and to facilitate additional

violations of Title 18 U.S.C. § 1961, *et seq.*, and Title 42 U.S.C. §§ 1983 & 1985 by those Defendants [see, e.g., D.E. #78 at ¶ 2(B)(I)(iii), page 5; & D.E. #75 at ¶ 1(A)(iv), page 18"; & **"BRIEF FOR APPELLANT"** at pages 26 - 29].

(iii) The Defendants-Appellees argue that "judicial economy will be served if this Court stays the current briefing schedule until the Court rules on the pending motions to dismiss". What the Defendants-Appellees are **really arguing is that they, themselves, would be "served if this Court stays the current briefing schedule until the Court rules on the pending motions to dismiss"** inasmuch as **they cannot tender a brief of their own** which provides any meritorious defenses or arguments in opposition to those issues contained within Akers' "BRIEF FOR APPELLANT", as served on November 12, 2001. Akers has already honored the "Briefing Schedule" as set by this Honorable Court; shall continue to do so; hereby **"OBJECTS"** to the Defendants' Appellees' request for any further delay in this appeal; and asserts that such a course of action as requested by...

...the Defendants-Appellees would be the equivalent of granting a "ceasefire" to the Al Qaeda - thereby allowing it to: (a) arrange for escape routes; (b) reassemble, resupply, & regroup in some unknown location; and, then, (c) plan and implement further terrorist attacks upon additional innocent victims.

(iv) The Defendants-Appellees **again have the audacity** to argue that the they have "absolute immunities and prosecutorial immunities from suit which shields them from defending Akers' underlying claims" - and **Akers' response is the same** as it was

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every other time the Defendants-Appellees have attempted to assert this ludicrous "defense", i.e.:

"On December 8, 2000, Kentucky's Assistant Attorney D. Brent Irvin (hereinafter "Irvin"), served his "MOTION TO BE PERMITTED TO PRACTICE IN THIS PARTICULAR CASE WITHOUT LOCAL COUNSEL". Irvin's said "Motion" particularly underscores the particular difficulties with which Akers has been faced from the very outset of his so-called "Domestic Relations" matters, i.e., **defending against the vast resources of the entire Commonwealth of Kentucky as applied to personal agendas of private individuals in their private capacities**. Irvin now seeks to shield Defendants Clark, Overstreet, Red Corn, Ferguson, and Swartz from their clearly unconstitutional and otherwise unlawful acts by attempting to invoke Eleventh Amendment immunities and, thereby, allow them to hide behind the innocent taxpayers of Kentucky. In Akers' Complaint, it is obvious that Akers has not named either the Commonwealth of Kentucky **or** the innocent taxpayers of Kentucky **or** either of the Defendants who Irvin purports to represent in any of their respective official capacities. The mere fact that those said Defendants committed unconstitutional and otherwise unlawful acts in their "private capacities" and then committed specific acts in the furtherance thereof in their respective "official capacities", **without jurisdiction**, does not relieve them of their liabilities as "persons" under Title 18 U.S.C. §§ 2, 3, 4, 5, 1964(c); Title 42 U.S.C. §§ 1983 & 1985(3); and those other related statutory provisions cited in Akers' Memorandum. Moreover, it is doubtful that Irvin's representation of those Defendants he purports to represent is even permissible under the Constitution, laws, or regulations of the Commonwealth of Kentucky absent a public referendum specifically authorizing the same." [D.E. #46 at ¶ 2]

"It is preposterous for the herein defendants to assert that the Eleventh Amendment (or other provision) to the United States Constitution was ever intended to afford immunities for criminal acts or, indeed, **any other act** in direct violation or contravention thereof. Moreover, it is Akers' position that the fraudulent extradition and/or kidnapping of Akers from his home State of Tennessee effected a "constructive waiver" of sovereign immunities;[4] that the lack of "subject matter" and "personal" jurisdiction in so doing constituted an "absolute waiver" of sovereign immunities;[5] that representation of any of the herein defendants by the Attorney General's Office of the Commonwealth of Kentucky constitutes an "intentional and actual waiver" of sovereign immunities; and that the obvious elements of "fraud","conspiracy", and "malice", ***inter alia***, pervasive within the activities of the remaining defendants invalidates any claims of immunities by them.

A representative analogy would be:

Parties B through Z conspire to and, in fact, carry out the criminal act of robbing Victim A. An integral part of the conspiracy of Parties B through Z is an agreement that, in order to prevent Victim A from filing criminal charges against them, Parties B through Z will devise, implement, and effectuate fraudulent criminal charges **against Victim A** so that; when Parties B through Z are called to and, in fact, do testify against Victim A in his criminal trial, Parties B through Z (who are the actual criminals in the overall matter) acquire immunities from their testimony against Victim A; then assert a defense of "qualified immunity" against

prosecution for "conspiracy" against and "robbery" of Victim A.[6]

Surely, the common law permits no such immunities for Parties B through Z. [D.E. #68 at ¶ (a)(2)(E); & D.E. #75 at ¶ (5)(V)(E)(i)]; &

"Defendant Kelly acknowledges that he is not entitled to any immunities in this action. However, to whatever extent he supports the arguments of any of his co-defendants respecting any such alleged immunities, Akers hereby responds that **neither are any of Kelly's co-defendants entitled to immunities** inasmuch as they have committed **unlawful acts** in their **private capacities** and, then, perpetuated those acts in their **official capacities, without "personal" or "subject matter" jurisdiction**. [see, e.g., **Robichaud v. Roman, C.A. 9 (Ariz.) 1965, 351 F.2d 533**, i.e., "Title of office, **quasi-judicial or even judicial**, does not of itself immunize officer from claim of damages under this [Title 42 U.S.C. § 1983] (emphasis added); **Henzel v. Gerstein, C.A. 5 (Fla.) 1979, 608 F2d 654**, i.e., "The 'absence of jurisdiction' exception to rule that a judge is absolutely immune from civil rights damage liability for acts within his judicial capacity, **except when he acts in absence of all jurisdiction**, refers to situations in which a judge acts **purely in a private capacity**" (emphasis added); and **Sparks v. Duval County Ranch Co., C.A.5 (Tex.) 1979, 604 F.2d 976, affirmed 101 S.Ct. 183 449 U.S. 24, 66 L.Ed. 2d 185**, i.e., "Rule of judicial immunity from damages, with a single bright-line exception, *viz.*, **a judge is not protected if he acts in 'clear absence of all jurisdiction'**, is as broad as, but no broader than, necessary." (emphasis added) [D.E. #78 at ¶ (2)(V)(i)]

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[4] See Akers' Complaint at ¶¶ 56 through 68, & ¶¶ 70 through 79; and parallel ¶¶ E-56 through E-68 together with FN66 through FN71 thereto, E-70 thru E-79 together with FN72 through FN75 thereto of accompanying Memorandum.

[5] See Akers' Memorandum at ¶ 81 together with FN81 & FN82 thereto.

[6] See Akers' Complaint at ¶¶ 2, 3(d) thru 3(g), 4(d), 5, 10(a) thru 10(w), 7 [(sic) - should be "11"], 12, 24, 31 thru 44, 47, 48 thru 50, 56, 58, 64, 65, 66, 68, 70 thru 89, 91, 96 through 104, 106 thru 112, 115, 117, 118, 121 thru 155, and "PRAYER(S) FOR RELIEF" of Akers' Complaint; and ¶¶ A-2, A-3, A-4, E-1, E-2, E-4 together with FN40 thereto, E-8, E-9, E-11, parallel ¶¶ E-12 together with FN41 thereto, E-24, E-31 thru E-44 together with FN44 through FN57 thereto, E-47 together with FN59 thereto, E-48 thru E-50 together with FN60 through FN62 thereto, E-56, E-54 together with FN65 thereto, E-56 together with FN66 thereto, E-58, E-64, E-65, E-66 together with FN70 & FN71 thereto, E-68, E-70 thru E-89 together with FN72 through FN95 thereto, E-91 together with FN97 thereto, E-96 through E-104 together with FN101 through FN105 thereto, E-106 through E-112 together with FN106 through FN127 thereto, E-115 with FN128 thereto, E-117 together with FN131 thereto, E-118 together with FN133 thereto, and E-121 through E-129 together with respective FN134 through FN136 thereto of Akers' Memorandum.

(v) The Defendants-Appellees label Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" as a "frivolous but vexatious civil rights action". The term "frivolous" is defined as follows:

> "Of little weight or importance. **A pleading is 'frivolous' when it is clearly insufficient on its face, and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay** or to embarrass the opponent. **A** claim or **defense is frivolous if a proponent can present no rational argument based upon the evidence or law in support of that claim or defense.** Frivolous pleadings may be amended to proper form, or ordered stricken, under the federal and state Rules of Civil Procedure." [Black's Law Dictionary, Sixth Edition, 12th Reprint, 1998, emphasis added]

In view of the history of this case, Akers suggests that perhaps it is this Honorable Court who should decide whose pleadings have been "frivolous".

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WHEREFORE, in view of the foregoing, the Plaintiff-Appellant, James G. Akers,, **without counsel**, will not ask that the "NOTICE OF ADOPTION OF APPELLEES' MOTIONS TO DISMISS; MOTION TO STAY BRIEFING SCHEDULE PENDING DISPOSITION OF MOTION TO DISMISS AND MOTION TO STAY FURTHER PROCEEDINGS PENDING MOTIONS TO DISMISS" as served by Defendant-Appellee Pamela Miller (hereinafter "Miller") and/or the Lexington-Fayette Urban County Government (hereinafter "LFUCG") on December 11, 2001, be "STRICKEN" from the record as would clearly be warranted pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, but will simply ask and pray of this Honorable Court to "**DENY**" the same but allow it to remain an integral part of the Official Record on Appeal as an example of the manner in which the herein Defendants-Appellees have attempted to unduly burden the cost of this litigation while, at the same time, unconstitutionally deprive Akers of his rights and privileges provided for under, ***inter alia***, the First Amendment to the United States Constitution.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Appellee
Post Office Box 3648
Brentwood, Tennessee 37024
4708 Trousdale Drive
Nashville, Tennessee 37220
Telephone: 615/834-2843
Facsimile: 615/831-9307

CERTIFICATE OF SERVICE

COMES THE AFFIANT, Dorothy M. Mackin, and hereby certifies that: (1) I am not a party to the civil action styled "**JAMES G. AKERS, Plaintiff-Appellant, v. CAROLYN P. BISHOP, et al, Defendants-Appellees.**"; (2) I am a **citizen** of the **United States of America** and the **State of Tennessee** therein; (3) I am over the age of 21; (4) to the best of my knowledge, information, and belief, I am duly qualified to execute service of process on behalf of Plaintiff James G. Akers; and (5) I have, on the date last written and notarized hereinbelow, served a true, accurate, and complete copy of the foregoing "**RESPONSE**" to the "NOTICE OF ADOPTION OF APPELLEES' MOTIONS TO DISMISS; MOTION TO STAY BRIEFING SCHEDULE PENDING DISPOSITION OF MOTION TO DISMISS AND MOTION TO STAY FURTHER PROCEEDINGS PENDING MOTIONS TO DISMISS" as served by Defendant-Appellee Pamela Miller (hereinafter "Miller") and/or the Lexington-Fayette Urban County Government (hereinafter "LFUCG") on December 11, 2001, via "**UNITED STATES MAIL-FIRST CLASS**", on legal counsel for the Defendants-Appellees as follows:

(a) CAROLYN P. BISHOP:
Served Attorney: Leslie Rosenbaum, Esquire
300 Lexington Building
201 West Short Street
Lexington, Kentucky 40507

(b) DORIS FLEMING:
Served Attorney: David B. Scott, Esquire
Ortale, Kelley, Herbert & Crawford
P. O. Box 198985
Nashville, Tennessee 37219-8985

(c) ALLEN I. RUSHING:
Served Attorney: William W. Allen, Esquire
201 West Short Street
Lexington, Kentucky 40507-1269

(d) CBT DOES 1 THRU 40:

[Service inappropriate without leave of Court]

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(j) THOMAS L. CLARK:
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(p) CAO DOES 1 THRU 20:

[Service inappropriate without leave of Court]

(q) FCC DOES 1 THRU 10:

[Service inappropriate without leave of Court]

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(v) PAMELA R. GOODWINE:
Served Attorney: D. Brent Irvin, Asst. Atty. General
Commonwealth of Kentucky
Capitol Building, Suite 118
700 Capitol Avenue
Frankfort, Kentucky 40601

s/ Dorothy M. Mackin
DOROTHY M. MACKIN,
Agent for Appellant
c/o Post Office Box 3648
Brentwood, Tennessee 37024

STATE OF TENNESSEE)
)
) **ss.**
)
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove Dorothy M. Mackin has personally appeared before me on this, the 21st day of December, 2001, has acknowledged the foregoing, and subscribed her signature thereto in my presence.

s/ Sherrie F. Hicks
NOTARY PUBLIC, State-at-large

My Commission Expires: 03/26/2005

APPENDIX

[EXHIBITS ARE NOT ATTACHED TO THE HEREIN PETITION FOR WRIT CERTIORARI INASMUCH AS UNWARRANTED DUPLICATION WOULD RESULT]

INDEX OF EXHIBITS

Exhibit	Description:	Page Number: Apndx/Cumul
CA6-01	"Letter"/"Order"/"Directive" issued by Sixth Circuit Court of Appeals Clerk Diane Schnur on 11/16/2001	1 / 29
CA6-02	"General Docket", U.S. Court of Appeals for the Sixth Circuit, Case #01-6243, as of 12/18/2001	2 / 30
CA6-03	"Civil Docket", U.S. District Court for the Middle District of Tennessee (Nashville); Akers v. Bishop, et al; Case #00-CV-1142, as of 10/26/2001	10 / 38
CA6-04	"Briefing Schedule", U.S. Court of Appeals for the Sixth Circuit, Case #01-6243, issued 10/16/2001	21 / 49
CA6-05	Akers' "RESPONSE & OBJECTIONS TO: 'STATE APPELLEES' MOTION TO STAY BRIEFING SCHEDULE PENDING MOTIONS TO DISMISS" w/Transmittal & Postal Receipt, served 11/26/2001	25 / 52
CA6-06	"RESPONSE TO APPELLANT'S MOTION FOR RECONSIDERATION" served by Kentucky Asst. Atty. General, D. Brent Irvin, on 12/13/2001	41 / 67

[END OF DOCUMENT]

EXHIBIT "USSC-08" 137

FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENN
SEP 21 2001

DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JAMES G. AKERS, Plaintiff,	)	FILE NUMBER: 3:00-1142
v.	)	**NOTICE OF APPEAL**
CAROLYN P. BISHOP; *et al*, Defendants.	)	

NOTICE IS HEREBY GIVEN that the Plaintiff, James G.Akers, **without counsel**, in the above named case, hereby appeals to theUnited States Court of Appeals for the Sixth Circuit from the "ORDER" transferring the same to United States District Court for the Eastern District of Kentucky as entered in this action by Circuit Judge Robert L. Echols in the United States District Court for the Middle District of Tennessee, Nashville Division, on the 18th day of September, 2001.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, Plaintiff
Post Office Box 3648
Brentwood, Tennessee 37024
Telephone: 615/834-2843
Facsimile: 615/831-9307

CERTIFICATE OF GOOD FAITH

COMES THE PLAINTIFF, James G. Akers, **without counsel**, and hereby certifies that the hereinbefore "NOTICE OF APPEAL" is filed in good faith inasmuch as there are genuine issues of material fact which, pursuant to provisions of Constitutional and Statutory Laws of the United States of America coupled with applicable common law and principles of equity at law as are all sufficiently contained within the United States District Court for the Middle District of Tennessee records, preclude the transfer of the instant case to United States District Court for the Eastern District of Kentucky.

s/ James G. Akers
JAMES G. AKERS, Plaintiff
Post Office Box 3648
Brentwood, Tennessee 37024
Telephone: 615/834-2843
Facsimile: 615/831-9307

STATE OF TENNESSEE)
) **ss.**
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove James G. Akers has personally appeared before me on this, the 21st day of September, 2001, has acknowledged the foregoing, and subscribed his signature thereto in my presence.

s/ Sherrie F. Hicks
NOTARY PUBLIC, State-at-large

My Commission Expires: 03/26/2005

CERTIFICATE OF SERVICE

COMES THE AFFIANT, Dorothy M. Mackin, and hereby certifies that: (1) I am not a party to the civil action styled "JAMES G. AKERS, Plaintiff, V. CAROLYN P. BISHOP, et al, Defendants."; (2) I am a citizen of the United States of America and State of Tennessee therein; (3) I am over the age of 21; (4) to the best of my knowledge, information, and belief, I am qualified to execute service of process on behalf of Plaintiff James G. Akers; and (5) I have, on the date last written and notarized hereinbelow, served a true and complete copy of the foregoing - "NOTICE OF APPEAL" together with the accompanying "CERTIFICATE OF GOOD FAITH" via "UNITED STATES MAIL-FIRST CLASS", postage prepaid, in the manner as follows:

(a) CAROLYN P. BISHOP:
Served Attorneys: **COUNSEL OF RECORD**:
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[Service inappropriate without leave of Court]

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[Service inappropriate without leave of Court]

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(p) CAO DOES 1 THRU 20:

[Service inappropriate without leave of Court]

(q) FCC DOES 1 THRU 10:

[Service inappropriate without leave of Court]

(r) REBECCA M. OVERSTREET:
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(s) CINDY G. SCHWARTZ:
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Served Attorney: Darrell G. Townsend, Esquire
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(u) TODD D. FERGUSON:
Served Attorney: D. Brent Irvin, Asst. Atty. General
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(v) PAMELA R. GOODWINE:
Served Attorney: D. Brent Irvin, Asst. Atty. General
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DOROTHY M. MACKIN,
Agent for Plaintiff
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STATE OF TENNESSEE)
)
) ss.
)
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove Dorothy M. Mackin has personally appeared before me on this, the 21st day of September, 2001, has acknowledged the foregoing, and subscribed her signature thereto in my presence.

NOTARY PUBLIC, State-at-large

My Commission Expires: 03/26/2005

[END OF DOCUMENT]

 EXHIBIT "USSC-09"

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JAMES G. AKERS, Plaintiff	)	
v.	)	No. #:00-1142
	)	JUDGE ECHOLS
CAROLYN P. BISHOP, DORIS FLEMING, ALLEN I. RUSHING, TODD M. LAYNE, DONALD SHANNON, JERRY L. KELLY, JOHN J. VAUGHN, THOMAS D. CLARK, KATHERINE WITT, PAMELA MILLER, LOU A. RED CORN, REBECCA M. OVERSTREET, CINDY G. SWARTZ, ERNEST W. WILLIAMS, TODD D. FERGUSON, PAMELA D. GOODWINE, and various JOHN and JANE DOES, Defendants.	)	

ORDER

Presently pending before the Court are Motions to dismiss by Defendants Bishop, Williams, and Rushing (Docket Entry Nos. 55, 71 & 73) and Motions to Dismiss or Transfer by all other Defendants (Docket Entry Nos. 31, 34, 37, 38, 42, 51, & 76). Plaintiff has filed several documents in opposition.

For the reasons explained in the Memorandum entered contemporaneously herewith, Defendants' Motions to Transfer are hereby GRANTED, and this case is hereby TRANSFERRED to the United States District Court for the Eastern District of Kentucky.

Defendants' Motions to Dismiss are hereby DENIED AS MOOT.

It is so ORDERED.

s/ Robert L. Echols
ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

1

This document was entered on
the docket in compliance with
Rule 58 and/or Rule 70(a).

FRCP on 9-18-01 by jr

[END OF DOCUMENT]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JAMES G. AKERS, Plaintiff	)	
v.	)	No. #:00-1142
	)	JUDGE ECHOLS
CAROLYN P. BISHOP, DORIS FLEMING, ALLEN I. RUSHING, TODD M. LAYNE, DONALD SHANNON, JERRY L. KELLY, JOHN J. VAUGHN, THOMAS D. CLARK, KATHERINE WITT, PAMELA MILLER, LOU A. RED CORN, REBECCA M. OVERSTREET, CINDY G. SWARTZ, ERNEST W. WILLIAMS, TODD D. FERGUSON, PAMELA D. GOODWINE, and various JOHN and JANE DOES, Defendants.	)	

MEMORANDUM

Presently pending before the Court are Motions to dismiss by Defendants Bishop, Williams, Rushing (Docket Entry Nos. 55, 71 & 73) and Motions to Dismiss or Transfer by all other Defendants (Docket Entry Nos. 31, 34, 37, 38, 42, 51, & 76). Plaintiff has filed several documents in opposition.

For the reasons explained herein, Defendants' Motions to Transfer will be GRANTED, and this case will be TRANSFERRED to the United States District Court for the Eastern District of Kentucky. Defendants' Motions to Dismiss will be DENIED AS MOOT.

Plaintiff, who proceeds pro se, has filed a 134-page Complaint (Docket Entry No. 1) against sixteen individuals and numerous unnamed defendants. He alleges claims for violations of his...

This document was entered on
the docket in compliance with
Rule 58 and/or Rule 70(a).

FRCP on 9-18-01 by jr

...constitutional rights under 42 U.S.C. § 1983 (1994 & Supp. IV), conspiracy to violate his constitutional rights under 42 U.S.C. § 1985 (1994), and violations of the Racketeer and Influenced Corrupt Organizations Act (RICO), 18 U.S.C. § 1961-68 (1964 & Supp. IV). Because the claims are based on federal law, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (1994).

This lawsuit arises from Plaintiff's criminal convictions for stalking and assaulting Defendant Carolyn Bishop, his former wife. The defendants include judges, prosecutors, and witnesses involved in the criminal proceeding which took place in state courts in Kentucky. Plaintiff alleges in the instant suit that his Kentucky state court convictions resulted from an unlawful conspiracy between the Defendants.

Defendants now move to dismiss for lack of jurisdiction pursuant to Rule 12(b) (2), for lack of venue pursuant to Rule 12(b) (3), and for failure to state a claim upon which relief can be granted pursuant to Rule 12(b) (6) of the Federal Rules of Civil Procedure. All Defendants except Bishop, Williams, and Rushing seek, in the alternative, to have the case transferred pursuant to either 28 U.S.C. § 1404(a) (1994) or 28 U.S.C. § 1406(a) to the united States District Court for the Eastern District of Kentucky.

The applicable venue statue states,

> A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in . . . a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred . . . .

28 U.S.C. § 1391(b) (2) (1994).

The Court has reviewed Plaintiff's lengthy Complaint, and the only events alleged to have occurred in this District are some telephone calls to and from his former wife, Defendant Carolyn Bishop, in Lexington, Kentucky, which may have violated a protective order and formed the basis for contempt charges, and his extradition in October 1995 from Tennessee in Kentucky after his arrest. All other events alleged in the Complaint occurred in the Eastern District of Kentucky, including his divorce, the events that led to his arrests, his trial in state court, sentence, and the location of his incarceration. Therefore, based upon the record before the court, the Court concludes that "a substantial part of the events or omissions giving rise to the claim[s] occurred" in the Eastern District of Kentucky. Only a few tangential acts/events are alleged to have occurred in the Middle District of Tennessee. Consequently, the Court finds that venue does not lie in this District under 28 U.S.C. § 1391(b)(2).

However, RICO claims have a special venue statute, 18 U.S.C. § 1965 (1994), which states in part:

> (a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, if found, has an agent, or transacts his affairs.
>
> (b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of Justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

18 U.S.C. § 1965 (a) and (b).

The only Defendant who resides, is found, has an agent or transacts his affairs in this District is Ernest Williams.[1]

Apparently, Plaintiff does not dispute that venue cannot lie in this District as to his RICO claims against the other fifteen Defendants based on 18 U.S.C. § 1965 (a). Giving Plaintiff's allegations the liberal construction afforded pro se litigants, however, he maintains that venue exists here as to the claims against the remaining Defendants pursuant to 18 U.S.C. § 1965 (b). As expressly stated in the statute, before a district court can summons partied from other districts to answer to a RICO claim, it must find that "the ends of justice" so require.[2] What is required to meet "the ends of justice" requirement under the statute is not crystal clear, but, at a minimum, the Court must determine that there is no other district which has personal jurisdiction and venue over all members of the alleged RICO conspiracy. See Butcher's Union Local No. 498 United Food & Commercial Workers v. ...

---

[2] Several Defendants contend that Plaintiff has fraudulently joined Defendant Williams in order to avail himself of the RICO venue statue. As the text of the statute indicates, a district court must have personal jurisdiction over at least one defendant pursuant to 1965(a) in order to bring the other members of an interstate conspiracy before the court pursuant to 1965(b). See Butcher's Union Local No 498, United Food & Commercial Workers v. SDC Inv., Inc., 788 F.2d 535, 539 (9th Cir. 1986). Since it is not essential to the Court's resolution of the pending motions, the Court expresses no opinion on this issue.

[2] Even then, a district court is not mandatorily required to bring the other parties before the court, since the statue provides only that the Court "may" cause such parties to be summoned and process be served in other districts. See 18 U.S.C. § 1965 (b).

SDC Inv., Inc., 788 F2d 535, 538-39 (9th Cir. 1986). The Second Circuit, in discussing an assertation of personal jurisdiction based upon 18 U.S.C. § 1965 (b), stated as follows,

> This jurisdiction is not automatic but requires a showing that the "ends of justice" so require. This is an unsurprising limitation. There is no impediment to prosecution of a civil RICO action in a court foreign to some defendants if it is necessary, but the first preference, as set forth in § 1965 (a), is to bring the action where suits are normally expected to be brought. Congress has expressed a preference in § 1965 to avoid, where possible, haling defendants into far flung fora.

PT United Can Co. Ltd. v. Crown Cork & Seal Co., Inc., 138 F.3d 65, 71-72 (2d Cir. 1998).

Based upon the record in this case, the Court finds that the "ends of justice" do not require that the other fifteen defendants be haled into this Court from other districts. First, the entire case can be litigated in the Eastern District of Kentucky, where most of the Defendants are located and almost all the alleged illegal acts occurred. As noted previously, venue is proper in that District and said District Court has personal jurisdiction over every defendant under Section 1965. More specifically, thirteen Defendants live there; Defendant Rushing, who now lives in Knoxville, lived there at the time of the events that led to this lawsuit; and Defendant Williams, who lives in Franklin, Tennessee, represented Plaintiff in that District during his trial there. See Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (personal jurisdiction requires "certain minimum contacts" with the forum state and "that the maintenance of the suit [against the non-resident defendant] does not offend traditional notions of fair...

---

play and substantial justice."). Based upon the facts and circumstances of this case, the Court finds that justice does not

require that this case be litigated here.

Second, even if the Court permitted Plaintiff to litigate his RICO claims here, venue would still be improper as to his Section 1983 and Section 1985 claims because a substantial part of the events giving rise to Plaintiff's claims did not occur in this District (28 U.S. C. § 1391 (b)(2) and Title 18 U.S.C. § 1965 (a) applies only to the RICO claims; not the Section 1983/Section 1985 claims. There has been no suggestion that this Court should dismiss the Section 1983/Section 1985 claims or sever or transfer them to the Eastern District of Kentucky, and proceed to trial here on the RICO claims. Such a course of action would not promote judicial economy and would delay and add additional hardships to the parties. Therefore, for the reasons stated, the Court concludes that venue does not properly lie in this District for Plaintiff's RICO Claims.

Having determined that proper venue does not lie in this District, the Court nest addresses the issue of dismissal or transfer. Title 28 U.S.C. § 1406 (a) provides as follows:

> The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

As previously noted, this suit could have been brought in the Eastern District of Kentucky, and the venue and personal jurisdiction requirements are satisfied there as to every claim of

---

the Plaintiff. Since an outright dismissal might subject Plaintiff's claims to legal defenses under applicable statutes of limitations, the Court finds that it is in the interests of justice to transfer the case to the Eastern District of Kentucky. [3]

For the foregoing reasons, Defendants' Motions to Transfer will be GRANTED, and this will be TRANSFERRED to the United States District Court for the Eastern District of

Kentucky. Defendants' Motions to Dismiss will be DENIED AS MOOT.

An appropriate order will be entered.

s/ Robert L. Echols
ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

[3] Given this disposition, the Court need not address Defendants' other arguments including the contentions of the many Defendants who claim that this Court lacks personal jurisdiction over them. See Pittock v. Otis Elevator Co., 8 F3d 325, 329 (6th Cir. 1983) (Citing Goldlawr, Inc. v. Heiman, 369 U.S. 463 (1962)) (transfer under 1406 (a) is permissable even where there is both improper venue and lack of personal jurisdiction in the transfer or forum).

[END OF DOCUMENT]

EXHIBIT "USSC-10" 153

FILED
NOV 1 2001
LEONARD GREEN, Clerk

C.O.A. CASE NUMBER: 01-6243
IN THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

JAMES G. AKERS,)
Plaintiff-Appellant,)
)
v.) APPELLANT'S RESPONSE
) TO: MOTION OF APPELLEE,
) JERRY L. KELLY, TO DISMISS
CAROLYN P. BISHOP; et al,) APPEAL
Defendants-Appellees.)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE - NASHVILLE DIVISION

COMES THE PLAINTIFF-APPELLANT, James G. Akers (hereinafter "Akers'), **without counsel**, and, in strict accordance with Title 28 U.S.C. § 1654 in conjunction with U.S.C.A.6 Combined Rule 27(e) of the Federal Rules of Appellate Procedure, files with this Honorable Court the hereinafter "**RESPONSE**" to the "MOTION OF APPELLEE, JERRY L. KELLY, TO DISMISS THE APPEAL FOR LACK OF JURISDICTION" as filed and served on October 23, 2001.

(1) In his latest desperate attempt to escape his formidable liabilities as detailed in Akers' "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c); TITLE 42 U.S.C. § 1983; & TITLE 42 U.S.C. § 1985(3)" as filed in United States District Court for the Middle District of...

Tennessee, Nashville Division, on November 21, 2000,[1] the Defendant-Appellee Jerry L. Kelly (hereinafter "Kelly") purports that Akers' appeal to this Honorable Court should be "dismissed" on grounds that this Court lacks jurisdiction pursuant to provisions of Title 28 U.S.C. § 1291. Kelly further cites the "treatise" set forth in 17 Moore's Federal Practice § 111.60[1] as authority for his position.

(2) Kelly's ill-timed "Motion" misapprehends these alleged "authorities" in context with the "Collateral Order Doctrine" as set forth in **Clemence v. Clemence, 8 Kan.App.2d 377, 658 P.2d 368 (1983)**, i.e., "'Collateral order' doctrine allows appeal from interlocutory order which conclusively determines issue completely separate from merits of action, and which cannot be given effective review on appeal from subsequent final judgement; such order is, for purposes of appellate jurisdiction, 'final order'"; **Firestone Tire & Rubber Co. v. Risjord, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981)**, i.e., "Because the litigation from which the instant petition arises had not reached final judgement at the time the notice of appeal was filed, the order...is appealable under § 1291 **only if it falls within the *Cohen* doctrine**." (emphasis added); **Abney v. United States, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977)** at FN4, i.e., "Of course, Cohen's **collateral-order exception** is equally applicable in both civil and criminal proceedings." (emphasis added); and **Armstrong v. McAlpin, 625 F.2d 433, C.A.N.Y. (1980)**, citing **Cohen v. Beneficial Loan Corp., 337 U.S. 541, 545-47, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949)** in which the Supreme Court held that "...certain orders were **immediately appealable** (1) if they were collateral to the merits; (2) if denial of an immediate appeal would result in irreparable damage...

---

[1] See Docket Entry #78 (excerpts appended hereto, as Exhibit "A1", for convenience of the Court).

to the party seeking review; and (3) if the issue raised was "too important" to "be deferred until the whole case is adjudicated."

(3) There are a number of issues and factual allegations contained within Akers' pleadings in the instant case which make it abundantly clear that this appeal "falls squarely within" the "Collateral Order Doctrine" and "Cohen Doctrine" exceptions to Title 28 U.S.C. § 1291, e.g.:

> (a) There can be no question that the "ORDER" from which Akers appeals addresses issues which are "collateral to the merits" of Akers' case;
>
> (b) There can, as well, be no question whatsoever that "denial of an immediate appeal would result in irreparable damage" to Akers inasmuch as it is absurd to allege that Akers can receive a fair adjudication before a jury comprised of citizens of the Federal District of Eastern Kentucky at Lexington. That has been conclusively shown in Akers' two (2) criminal trials in Fayette [Kentucky] Circuit Court. To now require Akers to return to that jurisdiction to seek redress would be the equivalent of requiring the victims of the September 11, 2001, terrorist attacks to seek redress in Afghanistan, and before a jury comprised of Taliban loyalists. Additionally, in view of the heretofore overt acts by the Defendants-Appellees which gave rise to Akers' claims herein, there can be no reasonable doubt that those same Defendants-Appellees would reserve no opportunity to further imprison Akers by some other fraudulent means in order to prevent this case from proceeding. The Federal Courts would, once again, be powerless to intervene without extensive litigation and further drain on Akers' resources, liberty, and effectiveness in obtaining justice. It is just, simply, now impossible for Akers to ever return to the jurisdiction of the Defendants-Appellees and for the Federal Courts to so require would...

amount to a fundamental miscarriage of justice in addition to effectively granting a dismissal of Akers' claims; &

(c) Finally, there can be no question whatsoever that the issues raised hereinabove and, especially, with respect to the venue in which this case proceeds to trial are "too important" to "be deferred until the whole case is adjudicated." if any respect whatever for the Constitutional, Statutory, and common laws of the United States of America is to be rendered.

WHEREFORE, the Plaintiff-Appellant, James G. Akers, **without counsel**, respectfullly asks and prays of this Honorable Court to "**DENY**" the "MOTION OF APPELLEE, JERRY L. KELLY, TO DISMISS THE APPEAL FOR LACK OF JURISDICTION" and permit this case to proceed through the orderly appellate process as currently scheduled.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, Plaintiff-Appellee

Post Office Box 3648
Brentwood, Tennessee 37024

4708 Trousdale Drive
Nashville, Tennessee 37220

Telephone: 615/834-2843
Facsimile: 615/831-9307

CERTIFICATE OF SERVICE

COMES THE AFFIANT, Dorothy M. Mackin, and hereby certifies that: (1) I am not a party to the civil action styled "**JAMES G. AKERS, Plaintiff-Appellant, v. CAROLYN P. BISHOP, et al, Defendants-Appellees.**"; (2) I am a **citizen** of the **United States of America** and the **State of Tennessee** therein; (3) I am over the age of 21; (4) to the best of my knowledge, information, and belief, I am duly qualified to execute service of process on behalf of Plaintiff James G. Akers; and (5) I have, on the date last written and notarized hereinbelow, served a true, accurate, and complete copy of the foregoing "**RESPONSE**" to the "MOTION OF APPELLEE, JERRY L. KELLY, TO DISMISS THE APPEAL FOR LACK OF JURISDICTION" via "**UNITED STATES MAIL-FIRST CLASS**", on the Defendants-Appellees named therein and/or their legal counsel as follows:

(a) CAROLYN P. BISHOP:
Served Attorneys: Leslie Rosenbaum, Esquire
300 Lexington Building
201 West Short Street
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and
Leonard Pogue, Esquire
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(b) DORIS FLEMING:
Served Attorney: David B. Scott, Esquire
Ortale, Kelley, Herbert & Crawford
P. O. Box 198985
Nashville, Tennessee 37219-8985

(c) ALLEN I. RUSHING:
Served Defendant: Allen I. Rushing
112 Oak Ridge Lane
Dallastown, Pennsylvania 17313

(d) CBT DOES 1 THRU 40:

[Service inappropriate without leave of Court]

(e) TODD M. LAYNE:
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(f) DONALD SHANNON:
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(g) JERRY L. KELLY:
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(h) SCC DOES 1 THRU 50:

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(i) JOHN J. VAUGHAN, M.D.:
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(j) THOMAS D. CLARK:
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(l) FCS DOES 1 THRU 30:

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(m) PAMELA MILLER:
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(n) LFG DOES 1 THRU 60:

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(p) CAO DOES 1 THRU 20:

[Service inappropriate without leave of Court]

(q) FCC DOES 1 THRU 10:

[Service inappropriate without leave of Court]

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(s) CINDY G. SWARTZ:
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Louisville, Kentucky 40202

s/ Dorothy M. Mackin
DOROTHY M. MACKIN,
Agent for Plaintiff
c/o Post Office Box 3648
Brentwood, Tennessee 37024

STATE OF TENNESSEE)
) **ss.**
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove Dorothy M. Mackin has personally appeared before me on this, the 30th day of November, 2001, has acknowledged the foregoing, and subscribed her signature thereto in my presence.

s/ Anita J. Burke
NOTARY PUBLIC, State-at-large

My Commission Expires: 09/24/04

APPENDIX

(EXHIBIT "A1" ONLY)

FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENN.

MAR 09 2001

BY _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

JAMES G. AKERS, Plaintiff,	)	
v.	)	CIVIL ACTION NO. 3:00-1142
	)	Judge Echols
	)	Judge Knowles
CAROLYN P. BISHOP; *et al*, Defendants.	)	

RESPONSE AND OBJECTIONS TO "MOTION OF DEFENDANT JERRY KELLY TO DISMISS OR TRANSFER & "MEMORANDUM IN SUPPORT [THEREOF]"

COMES THE PLAINTIFF, James G. Akers, **without counsel**, and, in strict accordance with provisions of **TITLE 28 U.S.C. § 1654** and Local Rule 8(b)(3), files with this Honorable Court the hereinafter response and objections to the "MOTION OF DEFENDANT JERRY KELLY TO DISMISS OR TRANSFER" [Docket Entry #76] and the "MEMORANDUM IN SUPPORT OF MOTION OF DEFENDANT JERRY KELLY TO DISMISS OR ALTERNATIVELY TO TRANSFER VENUE" [Docket Entry #77] as served February 27, 2001, and received on February 28, 2001, by Akers at P. O. Box 3648; Brentwood, Tennessee 37024.

[EXHIBIT "A1"]

1. This Honorable Court is hereby specifically asked to take judicial notice of the fact that Kelly has not attempted to controvert **even a single averment** contained within Akers' **"CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c), TITLE 42 U.S.C. ...**

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§ 1983, & TITLE 42 U.S.C. § 1985(3)", nor applicable provisions of the Constitutional and statutory laws of the United States of America together with the cited authorities in support thereof, as contained within Akers' contemporaneously-filed **"MEMORANDUM & MEMORANDUM OF LAW"** (hereinafter "Akers' Complaint" and "Akers' Memorandum", respectively).[1] Instead, the Defendant Jerry Kelly: (A) relies upon "28 U.S.C. § 1401" [see Docket Entry #76 at ¶ 1, lines 1 & 2]; (B) "incorporates and adopts the arguments filed with the court in motions and memoranda filed on behalf of the other Defendants as they relate to the charges against Defendant Kelly, specifically including those pleadings filed by Carolyn P. Bishop; Kentucky Judges Thomas D. Clark, Rebecca Overstreet, and Pamela R. (sic) Goodwine; and Kentucky prosecutors Lou Ann Redcorn (sic), Cindy G. Schwartz, and Todd D. Ferguson" [Docket Entry #77 at ¶ 3, lines 1 through 5]; (C) fraudulently asserts that Kelly participated in the process to "close the sale of the [Akers'] marital home in Lexington" [id. at ¶ 4, lines 3 & 4][2];

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[1] **Kelly correctly acknowledges the jurisdictional bases set forth in Akers' Complaint [Docket Entry #76 at ¶ 2, lines 1 & 2]; that "...Akers alleges that Defendant Jerry Kelly participated in a conspiracy...to defraud [and] extort money from him" [id., lines 3 & 4]; that Akers alleges that "...Kelly violated the Racketeering Influenced and Corrupt Organizations Act" RICO)" [id., lines 6 & 7]; and that "any immunity arguments made on behalf of any of the judges or prosecutors related to this matter do not apply to (Kelly)" [id., page 2, lines 1 & 2]. Kelly incorrectly states that Akers additionally alleges that "Kelly participated in a conspiracy maliciously to prosecute, convict, and imprison [Akers] in Kentucky" inasmuch as Akers does not have, nor did he allege, any "direct" involvement by Kelly in those specific acts [see specific averments against Kelly as recapitulated in hereinafter ¶ 3].**

[2] Kelly's reference, *viz*: "*See* Complaint at ¶ 15" is obviously erroneous and can only be presumed to have been intended to read: "*See* Complaint at ¶ 50".

(D) fraudulently alleges that "[t]here is no allegation that Mr. Kelly has had any contact with Mr. Akers since that time" [id., lines 6 & 7][3]; (E) asserts that "[a]ll of the alleged conduct by...Kelly took place solely in Lexington, Kentucky" [id, lines 7 & 8]; and (F) argues that "[f]or all the foregoing reasons, Defendant Jerry Kelly's motion should be granted" on purported grounds that: (i) "this court lacks personal jurisdiction and venue" [id., ¶ 5, lines 1 & 2]; and (ii) "the applications of the doctrines of *res judicata* and collateral estoppel support dismissal of this case" [id., lines 2 & 3]. (G) As with most of his herein co-defendants, Kelly argues that "[a]lternatively, the case should be transferred to United States District Court for the Eastern District of Kentucky" [id., lines 3 through 5].

2. In the same hereinabove order as Kelly's pleadings, Akers hereby responds as follows:

(A) **28 U.S.C. § 1401**:

(i) Title 28 U.S.C. § 1401 reads as follows:

> "Any civil action by a stockholder on behalf of his corporation may be prosecuted in any judicial district where the corporation might have sued the same defendants."

Akers has not sued any of the herein defendants on behalf of either of Akers' corporations. Akers' herein civil action is pursuant to the provisions of TITLE 18 U.S.C. § 1964(c), TITLE

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[3] It can only be presumed that Kelly's reference to "that time" refers to September 23, 1994, and any such assertion would be fraudulent [see ¶ 57 of Akers' Complaint together with ¶ E-57 and footnote [68] of Akers' Memorandum].

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42 U.S.C. 1983, & TITLE 42 U.S.C. § 1985(3) which do not require involvement of Akers' corporations as parties hereto. Even so, there would appear to have been no conflict with respect to the herein asserted venue.

(B) **ARGUMENTS BY OTHER DEFENDANTS**: Kelly "incorporates and adopts the arguments filed with the court in motions and memoranda filed on behalf of the other Defendants", including Carolyn P. Bishop, Thomas D. Clark, Rebecca M. Overstreet, and Pamela D. Goodwine, Lou A. Red Corn, Cindy G. Schwartz, and Todd D. Ferguson. Reciprocally, Akers hereby "incorporates" his "RESPONSE[S] AND/OR OBJECTIONS..." thereto **as re-stated, amended, and/or supplemented** as hereinafter follows:

I. JURISDICTION/VENUE

(i) Defendants Clark, Overstreet, Goodwine, Red Corn, Schwartz, and Ferguson assert "venue is improper in the United States District Court for the Middle District of Tennessee but would be proper in the United States District Court for the Eastern District of Kentucky at Lexington, where most of the defendants reside and all the significant alleged events in Akers' Complaint took place" [Docket Entry #38 at ¶ 4]. The Defendants Witt, Fleming, Layne, Vaughan, and Bishop assert essentially the same in their motions and memoranda [see Docket Entry #42 at ¶ 3; Docket Entry #31 at ¶ 5; #34 at ¶ 4; Docket Entry #51 at ¶ 2(ii); and Docket Entry #63 at Argument III, respectively].

(ii) Unquestionably, the "**most significant events**" alleged in Akers' Complaint occurred in the Federal District of Middle Tennessee at Nashville, i.e., interstate extortion, interstate fraud, interstate kidnapping/fraudulent extradition, additional interstate extortion and/or blackmail, interstate civil

rights intimidation, and numerous violations of the civil rights of a citizen of the United States of America and State of Tennessee.

(iii) Taken at face value, the defendants' arguments, **in themselves**, would defeat Akers' extradition and subsequent convictions for "stalking" -- **notwithstanding obvious elements of "fraud", "conspiracy", and "malice", *inter alia*.**[4]

(iv) The Kentucky defendants' arguments with respect to transfer of this case to Central Kentucky are nothing more than a ploy to lure Akers back to the jurisdiction of the defendants, thereby subjecting Akers to "more of the same" oppression and

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[4] See Akers' Complaint at ¶¶ 2, 3(d) thru 3(g), 4(d), 5, 10(a) thru 10(w), 7 [(sic) - should be "11"], 12, 24, 31 thru 44, 47, 48 through 50, 56, 58, 64 (see hereinafter FN9), 65, 66, 68, 70 thru 89, 91, 96 thru 104, 106 thru 112, 115, 117, 118, 121 thru 155, & "PRAYER(S) FOR RELIEF", Akers' Complaint; and ¶¶ A-2, A-3, A-4, E-1, E-2, E-4 with footnote [40] thereto, E-8, E-9, E-11, parallel ¶¶ E-12 together with footnote [41] thereto, E-24, E-31 thru E-44 with footnotes [44] through [57] respectively thereto, E-47 together with footnote [59] thereto, E-48 through E-50 together with footnotes [60] through [62] respectively thereto, E-56, E-54 together with footnote [65] thereto, E-56 together with footnotes [66] & [67] thereto, E-58, E-64 (see hereinafter FN9), E-65, E-66 together with footnotes [70] & [71] respectively thereto, E-68, E-70 through E-89 together with footnotes [72] through [95] respectively thereto, E-91 together with footnote [97] thereto, E-96 through E-104 together with footnotes [101] through [105] respectively thereto, E-106 through E-112 together with footnotes [106] through [127] respectively thereto, E-115 together with footnote [128] thereto, E-117 together with footnote [131] thereto, E-118 together with footnote [133] thereto, and E-121 through E-129 together with footnotes [134] through [136] respectively thereto of Akers' Memorandum.

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tyranny which gave rise to Akers' claims herein asserted and to facilitate **additional violations of Titles 18 U.S.C. § 1961, et seq, & Titles 42 U.S.C. § 1983 & 1985 by those defendants.**

(v) It is absolutely fascinating that all those herein defendants who are residents of the Commonwealth of Kentucky attempt to invoke defenses of "lack of personal jurisdiction", deficient "*in personam* jurisdiction", and/or "lack of subject matter jurisdiction" -- **the very common law principles**

which they concertedly ignored, circumvented, suppressed, and denied throughout the process of fraudulently extraditing/ kidnapping Akers from his home State of Tennessee, then **twice fraudulently prosecuting, convicting, and imprisoning** him in the Commonwealth of Kentucky. Apparently, those Kentucky defendants are of the misconception that the United States of America is a province of the "Commonwealth" of Kentucky **rather than the fact** that **the "Commonwealth" of Kentucky is a "territory" of the United States of America and is, therefore, subject to the Constitution and laws of the United States of America. [see Title 18 U.S.C. § 5]**

(vi) The Kentucky defendants allege that "[a]ll or nearly all of the fact witnesses are in Kentucky" and that is, simply, not the case. Akers' "case-in-chief" will require at least nine (9) expert witnesses who are residents and maintain offices in Middle Tennessee, together with approximately twenty (20) lay witnesses who are also residents of Middle Tennessee. All "fact witnesses" who are residents of **Central Kentucky have previously testified with respect to every conceivable matter** in Akers' two...

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(2) criminal trials and all such testimony, to whatever extent relevant and admissible, can be utilized by the defendants as depositions or affidavits pursuant to F.R.E. 804.

(vii) In his initial pleading in this case [Docket Entry #20 at ¶ 7], Kentucky Assistant Attorney General D. Brent Irvin issued his "threat" to the effect that: "[in the event that the defendants' motions] to dismiss or transfer this case to United States District Court for the Eastern District of Kentucky at Lexington based on lack of jurisdiction and improper venue...is denied, the Attorney General's Office anticipates it would file an interlocutory appeal to the Sixth Circuit."

(viii) Although it appears that the concept of "equity" is one which the Kentucky defendants either struggle with (or refuse to accept), Akers would remind the Kentucky defendants in this case that all those appellate options which are available to them are equally available to Akers.

II. *RES JUDICATA*/COLLATERAL ESTOPPEL

(i) Defendants Clark, Overstreet, Goodwine, Red Corn, Schwartz, and Ferguson assert the doctrines of *res judicata* and/or collateral estoppel on the purported grounds that Akers had previously "filed a similar civil rights complaint in 1999 in the United States District Court for the Eastern District of Kentucky, while incarcerated at Eastern Kentucky Correctional Complex in West Liberty, Kentucky" and "[t]hat case was screened pursuant to the Prison Litigation Reform Act, and *sua sponte*...

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dismissed as frivolous, without prejudice, by Chief Judge Henry R. Wilhoit, Jr." [see Irvin's "MEMORANDUM IN SUPPORT OF MOTION TO TRANSFER VENUE OR DISMISS FOR LACK OF VENUE, LACK OF PERSONAL JURISDICTION, AND FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED", Docket Entry #39, ¶¶ A & B]. The defendants then allege Bishop to be the "victim" of Akers[5] [supra, page 2, line 4]; and propound their "paraphrased" version of Judge Wilhoit's "MEMORANDUM OPINION AND ORDER"[6] in which they "gloss over" Judge Wilhoit's findings that, in essence, Akers did "not clearly set forth the jurisdictional basis" and that the Court was without jurisdiction until such time as Akers' convictions had been "declared invalid". Both deficiencies have subsequently been remedied [see Akers' Complaint (generally) and Akers Memorandum at ¶ 119, page 169, together with footnote [134]]. Inasmuch as the Defendants Witt, Layne, and Vaughan assert essentially the same arguments in their motions and memorandums [Docket Entry #42 at ¶ 3; Docket Entry # 43 at [Argument] VII; & Docket Entry # 35 at ¶ B], Akers' "response" is the same.

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[5] **It is a matter of opinion who has been "victimized" by whom. Ultimately, that issue may be one that only a fair and impartial jury, in a fair and impartial courtroom setting, and presided over by a fair and impartial Judge can decide and is, indeed, an issue inextricably intertwined with the relief Akers seeks in**

this civil action. Perhaps Bishop has been "victimized" in the matters raised in the Kentucky Courts. **The real question, however, is by whom** – by Akers, by herself, or by her co-defendants in this case? On the other hand, **there can be no question whatsoever whether Akers has been "victimized"** [see Akers' Complaint and Memorandum (generally)] **or by whom**.

[6] Unfortunately, Judge Wilhoit categorically accepted Defendant Schwartz's fraudulent rendition of the facts of the case at bar. [see Akers' Memorandum, ¶ E-91, page 123, together with corresponding footnote [97] thereto]

(ii) To whatever extent any of the defendants argue that Akers' guilty plea of July 7, 2000, operates as a bar under the doctrine of *res judicata*/collateral estoppel, that argument is sufficiently addressed in Akers' Memorandum at ¶ 121 (together with corresponding footnotes [134] & [135] thereto.

(iii) Moreover, Akers' allegations and claims against the herein defendants include, **but not limited to**, "conspiracy", "robbery", "forgery", "mail fraud", "wire fraud", "interstate extortion/blackmail","interstate kidnapping and/or fraudulent extradition", "jury tampering/fraud on the court", "obstruction of justice", "unlawful imprisonment", and numerous violations of Title 18 U.S.C. § 1961 (et seq.) and Titles 42 U.S.C. § 1983 & 1985. **Not even a single one of those herein matters have been previously adjudicated** and, in fact, **have never even been raised** prior to the filing of Akers' herein "CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c), TITLE 42 U.S.C. 1983, & TITLE 42 U.S.C. § 1985(3)" on November 21, 2000.

(iv) Therefore, all of the herein Defendants arguments with respect to "defenses" pursuant to the doctrines of *res judicata* and/or collateral estoppel can only be construed as frivolous attempts to undermine and/or subvert the very essence, spirit, intent(s), and purpose(s) of those constitutional and statutory authorities cited in Akers' Complaint and Memorandum.[7]

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[7] See, e.g., **North Carolina v. Pearce** [Akers' Memorandum at FN4]; **Menna v.**

New York [id.]; Abney v. United States [id.]; Benton v. Maryland; [id., FN134]; and Heck v. Humphrey [hereinafter ¶ 2(b)III].

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III. *HECK V. HUMPHREY*

(i) The Defendants Clark, Overstreet, Goodwine, Red Corn, Schwartz, and Ferguson rely upon **Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364**, as authority for dismissal of Akers' Complaint [see Docket Entry #38 at page 16]. Defendants Witt, Fleming, Layne, Shannon, Bishop, and Rushing assert essentially the same in their individual motions and memoranda [Docket Entry #43 at (Argument) I; Docket Entry #31 at ¶ 9; Docket Entry #35, pages 16 & 17; Docket Entry #43 at (Argument) I; Docket Entry #63 at page 9, lines 1 thru 3; & Docket Entry #71 at ¶, respectively]. **The Defendants completely miss the point of *Heck v. Humphrey*.**

(ii) Heck was convicted of "voluntary manslaughter" for killing his wife. His conviction has never been reversed and, in fact, was affirmed by Indiana's Court of Appeals and Supreme Court. Heck remained "in custody" during the entire time of his civil action pursuant to Title 42 U.S.C. § 1983. There was no question as to whether the state of Indiana had both "personal jurisdiction" and "subject matter jurisdiction" over Heck and his prosecutions. Therefore, **the sole remedy available to Heck was habeas corpus** under Federal law.

(iii) **By contrast**, Akers did not "kill" **anyone**. In fact, there is no legitimate evidence that Akers **did anything to Bishop** other than slap her for striking him in his groin – under the influence of "extreme emotional disturbance" as the result of Bishop's previous abuse of Akers' grandchildren. The **only injury to Bishop** which can be directly attributed to Akers...

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was a "slightly-swollen lip" and there is no legitimate evidence that Akers "intended" to cause Bishop even **that injury**.[8] **Akers'**

conviction for "First Degree Assault" has been reversed twice by the Kentucky Court of Appeals as unlawful. Akers is no longer "in custody" and should never have been. Habeas corpus is no longer a remedy available to Akers and only Title 42 U.S.C. § 1983 remains so available. Moreover, ***Heck v. Humphrey*** **does not even address any claims comparable to those asserted by Akers** pursuant to Titles 18 U.S.C. § 1961, et seq, & Title 42 U.S.C. § 1985. ***Heck v. Humphrey*** just simply does not apply to Akers' herein case except with respect to its language as follows:

> [3] In general, exhaustion of state remedies is not a prerequisite to action under § 1983, even in action by state prisoner. 42 U.S.C.A. 1983.
>
> [5] Preiser, which held that habeas corpus is exclusive remedy for state prisoner who challenges fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within literal terms of § 1983; did not create [an] exception to "no exhaustion" rule of § 1983; it merely held that certain claims by state prisoners are not cognizable under that provision and must be brought in habeas corpus proceedings, which do not contain exhaustion requirement. 42 U.S.C.A § 1983; 28 U.S.C.A. § 2254.
>
> [6] Common-law cause of action for malicious prosecution, unlike related cause of action for false arrest and imprisonment, permits damages for confinement imposed pursuant to legal process.

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[8] **Even under Kentucky law (particularly K.R.S. 508.040), Akers' so-called act of "assault" of Bishop was punishable for only a maximum fine of $250 and/or 90-day sentence in the county jail** [see "OFFENSE, PENALTY AND BAIL SCHEDULE", APPENDIX A, Kentucky Rules of Court, 1995, West Publishing Company, November 1, 1994] **absent unconstitutional "*ex post facto*" enhancement under disguise of implementing, evolutionizing, and/or "testing the mettle" of Kentucky's newly-enacted/enhanced "Domestic Violence & Abuse" laws.**

[7] Successful malicious prosecution plaintiff may recover in addition to general damages, compensation for any arrest or imprisonment, including damages for discomfort or injury to his health, or loss of time and deprivation of society.

[11] Favorable termination of prior proceedings is not element of abuse of process cause of action.

[12] Gravamen of tort of abuse of process is not wrongfulness of prosecution, but some extortionate perversion of lawfully initiated process to illegitimate ends.

[18] If district court determines that § 1983 plaintiff's action, even if successful, will not demonstrate invalidity of any outstanding criminal judgement against plaintiff, action should be allowed to proceed, in absence of some other bar to suit. 42 U.S.C.A. § 1983.

[22] State courts are bound to apply federal rules in determining preclusive effect of federal-court decisions on issues of federal law.

CONCURRING OPINION

Justice SOUTER, with whom Justice BLACKMUN, Justice STEVENS, and Justice O'CONNER join, concurring in the judgement.

FN3. Some of the traditional common-law requirements appear to have liberalized over the years, see Prosser and Keeton 882 ("There is a considerable minority view which regards the conviction as creating only a presumption, which may be rebutted by any competent evidence showing that probable cause for the prosecution did not in fact exist"), strengthening the analogy the Court draws. ...[The] **Reconstruction-era common law recognizes a limited exception to the rule denying a malicious prosecution plaintiff benefit of the invalidation of his conviction: an exception for convictions "obtained by some type of fraud."** (emph. added) Ante, at 2371, n. 4 (citing *Crescent City Live Stock Co. v Butcher's Union Slaughter-House Co.*, 120 U.S. 141, 151, 7 S.Ct. 472, 477, 30 L.Ed. 614 (1887) *Preiser v.*

Rodriguez, 411 U.S. 475 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973) e.g., Young v. Kenny, 907 F.2d 874, 875-876 (CA9 1990) Preiser, Young v. Kenny, 907 F.2d 874, 875-876 (CA9 1990) Wollf v. McDonnel, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974) Young v. Kenny, 907 F.2d 874, 875-876 (CA9 1990) ante, ***498** at 2369-2370.

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FN4. ...If...individuals...like state prisoners, were required to show the prior invalidation of their conviction or imprisonment, the result would be to deny any federal forum for claiming deprivation of federal rights to those who cannot first obtain a favorable state ruling. The reason, of course, is that **individuals not "in custody" cannot invoke federal habeas jurisdiction, the only statutory mechanism besides § 1983** by which individuals may sue state officials in federal court for violating federal rights. That would be an untoward result. ...*501 It is one thing to adopt a rule that forces prison inmates to follow the federal habeas route with claims that fall within the plain language of § 1983 when that is necessary to prevent a requirement of the habeas statute from being undermined. That is what the Court did in *Preiser v. Rodriguez,* 411 U.S., at 489-492, 93 S.Ct., at 1836-1838, and that is what the Court's rule would do for state prisoners. Harmonizing § 1983 and the habeas statute by requiring a state prisoner ****2380** seeking damages for unconstitutional conviction to establish the previous invalidation of his conviction does not run afoul of what **we have called, repeatedly, "[t]he very purpose of" § 1983: "to interpose the federal courts between the States and the people, as guardians of the people's federal rights."** *Mitchum v. Foster,* 407 U.S. 225, 242, 92 S.Ct. 2151, 2162, 32 L.Ed.2d 705 (1972); see also Pulliam v. Allen, 466 U.S. 522, 541, 104 S.Ct. 1970, 1980-1981, 80 L.Ed.2d 565 (1984) *Mitchum v. Foster,* 407 U.S. 225, 242, 92 S.Ct. 2151, 2162, 32 L.Ed.2d 705

(1972); Patsy v. Board of Regents of Fla., 457 U.S. 496, 503, 102 S.Ct. 2557, 2561, 73 L.Ed.2d 172 (1982). A prisoner caught at the intersection of § 1983 and the habeas statute can still have his court; and, depending on the circumstances, he may be able to obtain § 1983 damages. It would be an entirely different matter, however, to shut off federal courts altogether to claims that fall within the plain language of § 1983. "[I]rrespective of the common law support" for a general rule disfavoring collateral attacks, the Court lacks the authority to do any such thing absent unambiguous congressional direction where, as here, reading § 1983 to exclude claims from federal court would run counter "to § 1983 history" and defeat the statute's "purpose." Wyatt v. Cole, 504 U.S., at 158, 112 S.Ct., at 1828. Consider the case of a former slave framed by Ku Klux Klan-controlled law-enforcement officers and convicted by a Klan-controlled state court of, for example, raping a white woman; and suppose that the unjustly convicted defendant did not (and could not) discover the proof of unconstitutionality until after his *502 release from state custody. If it were correct to say that § 1983 independently requires a person not in custody to establish the...

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prior invalidation of his conviction, it would have been equally right to tell the former slave that he could not seek federal relief even against the law-enforcement officers who framed him unless he first managed to convince the state courts that his conviction was unlawful. That would be a result hard indeed to reconcile either with the purpose of § 1983 or with the origins of what was "popularly known as the Ku Klux Klan Act," *Collins v. Hardyman*, 341 U.S. 651, 657, 71 S.Ct. 937, 939, 95 L.Ed. 1253 (1951), the statute having been enacted in part out of concern that many state courts were "in league with those who were bent upon

abrogation of federally protected rights," *Mitchum v. Foster*, supra, 407 U.S., at 240, 92 S.Ct., at 2161; ef. Cong. Globe, 42d Cong., 1st Sess.., 577 (1871)(Sen. Trumbull explaining that, under the Civil Rights Act of 1871, **"the Federal Government has a right to set aside...action of State authorities" that deprives person of his Fourteenth Amendment rights"**). It would also be a result unjustified by the habeas statute or any other post-§ 1983 enactment. **Nor do I see any policy reflected in a congressional enactment that would justify denying** to an individual today federal damages...merely because he was unconstitutionally fined by a State, or **to a person who discovers after his release from prison that, for example, state officials withheld exculpatory material.** And absent such a statutory policy, **surely the common law can give us no authority to narrow the "broad language" of § 1983, which speaks of deprivations of "any" constitutional rights, privileges, or immunities, by "[e]very" person acting under color of state law, and to which "we have given full effect [by] recognizing that § 1983 'provide[s] a remedy, to be broadly construed, against all forms of official violation of federally protected rights.'"** *Dennis v. Higgins*, 498 U.S. 439, 443, 445, 111 S.Ct. 865, 869-870, 112 L.Ed.2d 969 (1991)(quoting *Monell v. New York City Dept. of Social Svcs.*, 436 U.S. 658, 700-701, 98 S.Ct. 2018, 2040-2041, 56 L.Ed. 611 (1978). ***503** In sum, while the malicious-prosecution analogy provides a useful mechanism for implementing what statutory analysis requires, congressional policy as reflected in enacted statutes must ultimately be the guide. I would thus be clear that the proper resolution **2381 of this case (involving, of course, a state prisoner) is to construe § 1983 in light of the habeas statute and its explicit policy of exhaustion. **I would not cast doubt on the ability of an individual unaffected by the habeas statute to take advantage of the broad reach of § 1983.**

END OF DOCUMENT [Copr. (C) West 2000 West

Group. No claim to orig. U.S. govt. works.] (emphasis added)

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IV. *ROOKER-FELDMAN*

(i) Attached and appended as "Exhibit One" thereto Akers' "RESPONSE AND/OR OBJECTIONS TO [DEFENDANT] BISHOP'S 'MOTION FOR PERMISSION TO FILE AN AMENDED MOTION TO DISMISS' & ACCOMPANYING 'MEMORANDUM IN SUPPORT [THEREOF]'" filed and served on January 22, 2001 [Docket Entry #68], was a complete copy of **Rooker, et al., v. Fidelity Trust Co., et al., 263 U.S. 413, 44 S.Ct. 149;** and **District of Columbia Court of Appeals, et al., v. Marc Feldman and Edward J. Hickey, Jr., 460 U.S. 462, 103 S.Ct. 1303.** Again, with all due respect, Akers can see no proper application to the herein case. To whatever extent the herein defendants argue that any such application exists, Akers asserts that any/all similarities are overridden by hereinabove language of ***Heck v. Humphrey*** in conjunction with Title 18 U.S.C. § 1961, et seq., Title 42 U.S.C. §§ 1983 & 1985, together with the authorities in support thereof as cited in Akers' Complaint and Memorandum.

V. VARIOUS CLAIMS OF IMMUNITIES

(i) Defendant Kelly acknowledges that he is not entitled to any immunities in this action. However, to whatever extent he supports the arguments of any of his co-defendants respecting any such alleged immunities, Akers hereby responds that **neither are any of Kelly's co-defendants entitled to immunities** inasmuch as they have committed **unlawful acts** in their **private capacities** and, then, perpetuated those acts in their **official capacities, without "personal" or "subject matter" jurisdiction**. [see, e.g.,

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Robichaud v. Roman, C.A. 9 (Ariz.) 1965, 351 F.2d 533, i.e., "Title of office, **quasi-judicial or even judicial,** does not of itself immunize officer from claim of damages under this [Title 42

U.S.C. § 1983] (emphasis added); **Henzel v. Gerstein, C.A.5 (Fla.) 1979, 608 F2d 654,** i.e., "The 'absence of jurisdiction' exception to rule that a judge is absolutely immune from civil rights damage liability for acts within his judicial capacity, **except when he acts in absence of all jurisdiction,** refers to situations in which a judge acts **purely in a private capacity**" (emphasis added); and **Sparks v. Duval County Ranch Co., C.A.5 (Tex.) 1979, 604 F.2d 976, affirmed 101 S.Ct. 183 449 U.S. 24, 66 L.Ed. 2d 185,** i.e., "Rule of judicial immunity from damages, with a single bright-line exception, *viz.*, **a judge is not protected if he acts in 'clear absence of all jurisdiction'**, is as broad as, but no broader than, necessary." (emphasis added)

VI. *IN PERSONAM* JURISDICTION

(i) This issue has been sufficiently addressed by Akers in his "RESPONSE TO DEFENDANTS' VARIOUS 'MOTION(S) FOR PERMISSION TO PRACTICE PRO HAC VICE'; 'MOTION(S) TO DISMISS'; 'MOTION(S) FOR CHANGE OF VENUE'; RAISED DEFENSES OF VARIOUS IMMUNITIES" served and filed on December 22, 2000. Once again, Akers did not dictate jurisdiction and/or venue for this action. The statutory provisions cited in Akers' Complaint and his therewith contemporaneously-filed Memorandum did so. Akers did not author those cited statutes. The United States Congress did so. Akers...

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is without province to alter or ignore those cited provisions and so are the Defendants. Moreover, the defendants' assertions respecting transfer of this case to Central Kentucky amounts to nothing more than a ploy to lure Akers back to the jurisdiction of those defendants in this case, and thereby subject Akers to "more of the same" tyranny and oppression which underly Akers' claims herein asserted.

(ii) The Defendants allege that:

(a) they lacked "certain minimum contacts" with the State of Tennessee;

(b) "[no] acts of the defendants are alleged to have occurred in Tennessee"; and

(c) "[t]he allegations of the complaint reveal that Tennessee has no connection with the defendants and this court's *in personam* jurisdiction, running concurrent with that of the forum state fails."

(iii) Akers contends that:

(a) The defendants conveniently ignore (or attempt to mislead this Court with respect to) the fact that Akers was essentially kidnapped from the State of Tennessee (wherein Akers was, at the time, a citizen thereof and good standing therein) for no more than attempting to exercise his rights under the Constitutions of the United States of America and State of Tennessee based entirely on "fraud", "conspiracy", and "malice", *inter alia*, of the herein defendants. Once...

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that act of kidnapping and/or fraudulent extradition had been effectuated, Akers was at the complete mercy of the defendants in this case.

(b) It is immaterial whether any of the presently identified defendants were physically in Tennessee. The results were the same, i.e., violation of Akers' privileges and immunities secured by the Constitutions of the United States and the State of Tennessee; unlawful imprisonment of Akers; and injuries to Akers' in his person, property, and businesses as detailed in Akers' Complaint.

(c) The defendants' arguments, taken at face value, **in themselves** would invalidate Akers' charge, extradition, and two subsequent convictions for "stalking" – **not even taking into consideration** the obvious elements of "fraud", "conspiracy", and "malice, ***inter alia***, recapitulated within hereinafter ¶¶ 2(E)(iii).

(d) Again, apparently the Kentucky defendants

are of the misconception that the United States of America is a province of the "Commonwealth" of Kentucky **rather than the fact that the "Commonwealth" of Kentucky is a "territory" of the United States of America and is, therefore, subject to the Constitution and all the laws of the United States of America**. Likewise, the Commonwealth of Kentucky cannot exercise jurisdiction over acts of a citizen of the State of Tennessee, within Tennessee, especially when those acts are lawful within the State of Tennessee.

VII. "AUTHORITIES" CITED BY OTHER DEFENDANTS

(i) Kelly's co-defendants have attempted to inundate Akers with their individual and collective "spins" on an assortment of allegedly controlling Federal and state court decisions. The truth is, those defendants are only attempting to systematically undermine the United States Constitution and to divert attention from the facts of this case and those authorities cited within Akers' Memorandum. Moreover, it is unlikely that there has ever been a Federal case which fairly compares to the herein case in terms of the defendants' audacity in their pervasive acts of lawlessness and unconstitutionality – all under the "disguise" of implementing, evolutionizing, and/or "testing the mettle" of a newly-enacted/enhanced state law. **None of the "authorities" cited by the defendants override those which are cited in Akers' Memorandum, and the defendants cannot cite any such authorities.**

VIII. REVERSAL/SETTING ASIDE OF AKERS' CONVICTIONS

(i) Kelly's co-defendants argue that "Akers' convictions have never been reversed" and that, **somehow**, invokes a defense of *res judicata* and/or collateral estoppel and/or some other doctrine. **Not only have Akers' convictions been "reversed", but his outrageous "First-degree Assault" conviction has been reversed twice – by the Kentucky Court of Appeals**. Akers' "First-degree Stalking" conviction was

reversed once, but was affirmed after second conviction based upon, ***inter alia***, the fraudulent testimony of Kelly's co-defendants coupled with, and...

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augmented by, the unconstitutional, fraudulent, and otherwise unlawful acts of Defendants Red Corn, Overstreet, and Ferguson [see ¶¶ 2, 3, 4, 5, 9, 10, 7 [sic (should be "11")], 12, 16, 32, 34, 37, 38, 39, 40, 43 through 47, 50 thru 52, 54, 56, 57, 58, 60 through 63, 64[9], 65 through 68, 70 through 95, **esp. 96**, 97 through 101, **esp. 102, 103, 104, 107 through 112**, 113, **esp. 115, 117**, 118, **esp. 119 thru 127**, 128 through 136, 138 through 142, 144 through 150; in conjunction with parallel ¶¶ 2, 3(g), 4, B-1, C[10], D-1, E-1, E-2, E-12, E-16, E-32, E-34, E-37, E-38, E-40, E-43 thru E-47, E-50 thru E-52, E-54, E-56, E-57, E-58, E-60 thru E-63, E-64 (see hereinabove FN2), E-65 thru E-68, E-70...

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[9] In line 2 of paragraph 64 of Akers' Complaint, references to "hereinabove paragraphs E-52, & E-54 through E-57" are incorrect. Those references should read "hereinabove paragraphs E-58, E-60 through E-63, & hereinafter paragraph E-68, respectively". Akers humbly apologizes to all parties hereto, and the Court, for any inconvenience which these errors may have created.

[10] See especially ("Stalking" charge): "*Ex post facto* law" defined [Akers' Memorandum, page 6]; Walton v. State, 1977, 566 P.2d 765, 98 Idaho 422; Ross v. Hegstrom, 1969, 254 A.2d 556, 107 Conn. 403; State v. Phillips, 1960, 162 A.2d 113, 62 N.J.Super. 70, affirmed 167 A.2d 175, 34 N.J. 63; People v. ex rel. Johnson v. Ruthazer, 1951, 102 N.Y.S.2d 39, 198 Misc. 1044, affirmed 105 N.Y.S.2d 394, 278 App.Div. 905; Clayton v. Michael, 1966, 141 N.W. 2d 538, 258 Iowa 1037; Wigehert v. Lockhart, 1946, 166 P.2d 988, 114 Colo. 485; Ex parte Foster, 1936, 61 P.2d 37, 60 Okla.Cr. 50; Pierce v. Creecy, Mo. 1908, 28 S.Ct. 714, 210 U.S. 387, 52 L.Ed. 1113; Ex parte Morgan, D.C.Cal. 1948, 78 F.Supp. 756, affirmed 175 F.2d 404, cert. denied 70 S.Ct. 76, 338 U.S. 827, 94 L.Ed. 503; Ex parte Montoya, 1943, 135 P.2d 281, 170 Or. 499 [id., FN2, page 6]; "Due process of law defined" [id., FN5, page 8]; "Equal protection of the law" defined [id., FN6, page 11]; "Fraud" defined [id., FN7, page 13]; Title 18 U.S.C. §§ 2261A, 2262, & 2265 [id., pages 15 & 16]; CONSTITUTION OF TENNESSEE: ARTICLE 2, SECTION 8 with FN14 thereto [id., pages 18 & 19] and ARTICLE 1, SECTION 14 with FN16 thereto [id., page 19]; TENNESSEE

CRIMINAL CODE: "39-17-308. Harassment" [id., page 21] and "39-17-309. Civil rights intimidation" with FN21 thereto [id., page 22] & FN22 [id., page 23]; and KENTUCKY REVISED STATUTES: "500.060 Territorial applicability" with FN32 thereto [id., pages 31 & 32]; "508.140 Stalking in the first degree" with FN38 thereto [id., page 36].

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through E-95, **esp. E-96**, E-97 thruough E-101, **esp. E-102, E-103, E-104, E-107 through E-112**, E-113, **esp. E-115, E-117**, E-118, **esp. E-119, & E-120 through E-127**, together with corresponding footnotes thereto, respectively, of Akers' Memorandum]. The mere fact that Akers' was forced to enter an **unconstitutional**[11] "**guilty plea**" for "Assault under Extreme Emotional Disturbance" on July 7, 2000, in order to free himself from the "tyranny and oppression" of the herein Defendants **does not relieve any of those defendants of any liabilities under Title 18 U.S.C. § 1964(c), Title 42 U.S.C. § 1983, or Title 42 U.S.C. § 1985(3).**

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[11] See especially ("Assault" charge): North Carolina v. Pearce, 89 S.Ct. 2089 (1969) [Akers' Memorandum, FN4, pages 8 thru 10], i.e., "The theory of double jeopardy is that a person need only run the gantlet once. The gantlet is the risk of punishment which the state...imposes for that particular conduct. He risks maximum permissible punishment when first tried. That risk having been faced once need not be faced again. And **the fact that he takes an appeal does not waive his constitutional defense of former jeopardy** to a second prosecution. Green v. United States, 355 U.S. 184, 191-193, 78 U.S. S.Ct. 221, 225, 227, 2 L.Ed.2d 199." ..."In Ex parte Lange, 18 Wall. 163, 21 L.Ed. 872, the **petitioner...[736]...had already suffered complete punishment for his crime and could not be subjected to further sanction.**" [733] "The ban on double jeopardy has its deep roots in the history of occidental jurisprudence. 'Fear and abhorence of government power to try people twice for the same conduct is one of the oldest ideas found in western civilization'. Bartkaus v. Illinois, 359 U.S. S.Ct. 121, 151-155, 79 S.Ct. 676, 3 L.Ed.2d (Black, J., dissenting). **It prevents the State from using the criminal process as an instrument of harrassment** to wear the accused out by a multitude of cases with accumulated trials. Abbate v. United States, 359 U.S. S.Ct. 666, 672-673, 3 L.Ed.2d, 72." "The vice [735] of this procedure lies in relitagating the same evidence before two different juries with a man's innocence or guilt at stake'. **'Harrasment of an accused by successive prosecutions...so as to afford the prosecution a more favorable opportunity to**

convict are examples when jeopardy attaches. Downum v. United States, 372 U.S. 734, 736, 83 S.Ct. 1033, 1034, 10 L.Ed.2d 100. ...**'This case presents an instance of the prosecution being allowed to harass the accused with repeated trials and convictions on the same evidence, until it achieves its desired result...'** Ciucci v. Illinois, 356 U.S. 571, 573, 78 S.Ct. 839, 840, 2 L.Ed.2d 983. ...It is doubtless true that the State has an interest in adjusting sentences upward [737] when it discovers new..." (continued, page 22 hereof)

IX. BASES OF AKERS' CLAIMS

(i) The bases of Akers' herein claims against Kelly and his herein co-defendants are as set forth, in detail, in Akers' **"CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c), TITLE 42 U.S.C. § 1983, & TITLE 42 U.S.C. § 1985(3)"** & contemporaneously-filed **"MEMORANDUM & MEMORANDUM OF LAW"** in support thereof. The factual allegations contained therein, together with the laws of the United States of America and authorities cited in support thereof, speak for themselves. **Not one defendant has attempted to controvert a single averment and, in fact, they cannot.**

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[11] (continued from page 21 hereof): "...evidence warranting that result. But the **individual has an interest in remaining free of double punishment.** And in weighing those interests against one another, **the Constitution has decided the matter in favor of the individual.** See United States v. Tateo, 377 U.S. 463, 475, 84 S.Ct. 1587, 1594, 12 L.Ed.2d, 448" (emphasis added). **See also: Menna v. New York, 423 U.S. 61, 96 S.Ct. 241, 46 LEd(2d) 195 (1975),** i.e., "Where the State is precluded by the United States Constitution from haling a defendant into court on a charge, **federal law requires that conviction to be set aside even if the conviction was entered pursuant to a counseled plea of guilty"** (emph. added); Abney v. United States, 431 U.S. 651, 97 S.Ct., 52 L.Ed(2d) 651 (1977), i.e., "Double jeopardy clause protects an individual against more than being subjected to double punishments; **it is a guarantee against being twice put to trial for the same offense.** U.S.C.A Const. Amend. 5" (emphasis added); Fourteenth Amendment to the United States Constitution [id., 10 & 11], i.e., "**No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;** ...nor deny any person within its jurisdiction equal protection of the laws". (emphasis added); and **Benton v. Maryland, 89 S.Ct. 2056 (1969),** i.e., "9. Double jeopardy prohibition of the Fifth Amendment represents fundamental ideal in constitutional heritage and it

applies to the states through the Fourteenth Amendment; overruling Palko v. Connecticut, 302 U.S. 319, 58 S.Ct. 149, U.S.C.A. Const. Amends. 5, 14. 11. Idea underlying constitution **prohibition against double jeopardy** is that state **with all its resources and powers** should not be allowed to make **repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrasment, expense and ordeal and compelling him to live in a continued state of anxiety and insecurity, as well as enhancing possibility that even though innocent he may be found guilty**. U.S.C.A. Const. Amend.5." (emphasis added)

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(ii) The defendants and/or their legal counsel have raised issues which can only be considered as "frivolous" – **clearly because they have no "legitimate" or otherwise "meritorious" defenses**. In short, the defendants have acquired some extremely serious liabilities for themselves and it is only to be expected that they would now seek an "easy way out".

(iii) **It was the defendants themselves** who created their herein predicament – **not Akers**.

(C) **Kelly fraudulently asserts that he participated in the process to "close the sale of the [Akers'] marital home in Lexington"** [see Docket Entry #76 at ¶ 4, lines 3 & 4].

(i) In response, Akers attaches and appends hereto, as "Exhibit HHHH", a "Certified Copy" of the duly-recorded "Deed of Conveyance" with respect to the sale of the Akers' marital home and asks the Court to take particular note that the entire said transaction was handled by the law firm of Robert S. Strother, PSC; 1025 Dove Run Road, Suite 302; Lexington, Kentucky 40502.

(ii) Defendant Kelly, at the time, was employed by the law firm of Morgan & Pottinger of Lexington, Kentucky, and had no involvement whatsoever with the marketing, sale, or "closing" of the the Akers' marital residence.

(iii) Akers hereby challenges Defendant Kelly to tender even a "shred of evidence" to support his claim and/or defense (or whatever it was intended to be) and, when he...

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cannot, to provide a reasonable explanation to Akers, and to the Court, as to why appropriate sanctions should not be assessed for his obviously fraudulent misrepresentations.

(D) **Kelly asserts that "[t]here is no allegation that Mr. Kelly has had any contact with Mr. Akers since that time"** [see Docket Entry #76 at ¶ 4, lines 6 & 7] **and that assertion is just, simply, fraudulent**. Kelly's attention is hereby directed to ¶ 57 of Akers' Complaint together with ¶ E-57 and footnote [68] of Akers' Memorandum. Kelly certainly has the right to deny the allegations contained therein (at the risk of being charged with "perjury" in a Federal Court), if he so chooses. He shall not, however, be permitted to simply ignore those charges and/or the overall impact which his "criminal acts" have had on **subsequent criminal charges against Akers**.

(E) As with most of his co-defendants who are residents of Kentucky, **Kelly asserts that "[a]ll of the alleged conduct... took place solely in Lexington, Kentucky"** [id, lines 7 & 8].

(i) Kelly conveniently ignores (or attempt to mislead this Honorable Court with respect to) the fact that Akers was essentially "kidnapped" from the State of Tennessee (wherein Akers was, at the time, a citizen thereof and good standing therein) for no more than attempting to exercise his rights under the Constitutions of the United States of America and State of Tennessee based entirely on "fraud", "conspiracy", and "malice", ***inter alia***, of the defendants.

Once that act of "kidnapping and/or fraudulent extradition" had been effectuated, Akers was at the **complete mercy** the defendants in this case.

(ii) It is immaterial whether Kelly or any

presently[-identified] defendants were physically within Tennessee. **The results were the same, i.e., deprivation of Akers' privileges and immunities secured by the Constitutions of both the United States and the State of Tennessee; unlawful imprisonment of Akers; and injuries to Akers' in his person, property, and businesses as detailed in Akers' Complaint.**

(iii) The arguments of Kelly and his co-defendants, taken at face value, **in themselves would invalidate Akers' charge, extradition, and two subsequent convictions for "stalking" -- not even considering the obvious elements of "fraud", "conspiracy", and "malice, *inter alia*,** detailed in ¶¶ 2, 3(d) through 3(g), 4(d), 5, 10(a) through 10(w), 7 [(sic) - should be "11"], 12, 24, 31 through 44, 47, 48 through 50, 56, 58, 64 [see hereinabove FN9], 65, 66, 68, 70 through 89, 91, 96 through 104, 106 through 112, 115, 117, 118, 121 through 155, and "PRAYER(S) FOR RELIEF" of Akers' Complaint; and ¶¶ A-2, A-3, A-4, E-1, E-2, E-4 together with FN40 thereto, E-8, E-9, E-11, parallel ¶¶ E-12 together with FN41, E-24, E-31 through E-44 together with FN44 through FN57 thereto, E-47 together with FN59 thereto, E-48 through E-50 together with FN60 through FN62 thereto, E-56, E-54 together with FN65 thereto, E-56 with...

FN66 & FN67 thereto, E-58, E-64 [see hereinabove FN9], E-65, E-66 together with FN70 & FN71 thereto, E-68, E-70 through E-89 together with FN72 through FN95 thereto, E-91 together with FN97 thereto, E-96 thru E-104 together with FN101 through FN105 thereto, E-106 thru E-112 together with footnotes FN106 through FN127 thereto, E-115 together with FN128 thereto, E-117 together with FN131 thereto, E-118 together with FN133 thereto, and E-121 through E-129 with FN134 through FN136 thereto of Akers' Memorandum.

(iv) Again, apparently the Kentucky defendants are of the misconception that the United States of America is a province of the "Commonwealth" of Kentucky **rather than the fact that the "Commonwealth" of Kentucky is a "territory" of the United States of America and is, therefore, subject to the Constitution and all the laws of the United States of America. Likewise, the Commonwealth of Kentucky cannot exercise jurisdiction over acts of a citizen of the State of Tennessee, within Tennessee, especially when those acts are lawful within the State of Tennessee.**

(F) **Kelly argues that "[f]or all the foregoing reasons, Defendant Jerry Kelly's motion should be granted" on purported grounds that: (i) "this court lacks personal jurisdiction and venue" [id., ¶ 5, lines 1 & 2]; and (ii) "the applications of the doctrines of *res judicata* and collateral estoppel support dismissal of this case"** [id., lines 2 & 3]. **In response**, Akers...

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hereby re-states/reiterates his positions with respect thereto as clearly established in hereinabove ¶¶ 2(E)(i) through (iv); 2(B)VI(i) through (iii); & 2(B)II(i) through (v), respectively.

(G) As with his herein co-defendants who are residents of Kentucky, **Kelly also asserts that "[a]lternatively, the case should be transferred to the United States District Court for the Eastern District of Kentucky"** [id., lines 3 through 5]. **In response**, Akers hereby re-states/reiterates his positions with respect thereto as clearly established in hereinabove ¶¶ 2(B)I(ii) through (viii).

H. CONCLUSION

3. On November 21, 2000, Akers filed and served his **"CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(c), TITLE 42 U.S.C. § 1983, & TITLE 42 U.S.C. § 1985(3)"; "MEMORANDUM & MEMORANDUM OF LAW"**; and

extensive **"APPENDIX"/RELEVANT "EXHIBITS"** (Volumes 1 & 2 of 2) thereto [Docket Entries #1, #2, & #3, respectively]. The nature and intent of Akers' therein civil action against the Defendant Jerry L. Kelly are detailed in "COUNT(s) FOUR (¶ 131), FIVE (¶ 132), ELEVEN (¶ 138), TWELVE (¶ 139), FOURTEEN (¶ 141), FIFTEEN (¶ 142), SEVENTEEN (¶ 144), TWENTY-FOUR (¶ 151), TWENTY-FIVE (¶ 152), TWENTY-SIX (¶ 153), TWENTY-SEVEN (¶ 154), TWENTY-EIGHT (¶ 155), and "VERIFICATION" within Akers' Complaint. The specific factual allegations, and the authorities in support of Akers' claims, are detailed within each such "COUNT" therein by...

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reference to corresponding paragraphs within Akers' Complaint and all corresponding paragraphs and footnotes within Akers' Memorandum and Appendix/Relevant Exhibits.

4. On November 25, 2000, Defendant Kelly was properly served with all those documents in hereinabove ¶ 3 [see "Return of Service", Docket Entry #9].

5. On November 11, 2000, Defendant Kelly served a "MOTION FOR [a 30-day] ENLARGEMENT OF TIME TO ANSWER OR OTHERWISE PLEAD" (unaccompanied by memorandum in support thereof) to which Akers offered no opposition and, in fact, urged the Court to "**GRANT**" "in the interest of fairness and overall justice" [Docket Entry #46 at ¶ 3].

6. On January 10, 2001, this Honorable Court did, in fact, enter Its "ORDER" (Docket Entry #60] granting Kelly's motion for enlargement, extending the deadline for serving and filing Kelly's answer until January 14, 2001.

7. Notwithstanding Kelly's audacity to now file a pleading to Akers' Complaint **some forty-four (44) days subsequent to that date requested by him, unopposed by Akers**, and "**GRANTED**" by this Honorable Court; and those remedies available to Akers pursuant to **Rule 11(b)(1), (2), & (3); Rule 11(c); Rule 12(a)(2); Rule 12(f); & Rule 55** of the **Federal Rules of Civil Proceedure**, it remains Akers' preference to seek **only redress – by due process of law – only on the merits of**

the case – without capitalizing upon "technicalities" or "short cuts" as is commonly expected of practicing attorneys.

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8. Again, Defendant Kelly and his co-defendants have acquired extremely serious liabilities for themselves and Akers remains confident that the jury in this case will concur, upon hearing of the evidence as a whole, that Akers is entitled to all relief demanded herein.

WHEREFORE, the Plaintiff, James G. Akers, without counsel, hereby "**OBJECTS**" to the belated filing of "MOTION OF DEFENDANT JERRY KELLY TO DISMISS OR TRANSFER" [Docket Entry #76] and to his "MEMORANDUM IN SUPPORT OF MOTION OF DEFENDANT JERRY KELLY TO DISMISS OR ALTERNATIVELY TO TRANSFER VENUE" [Docket Entry #77], **in their entirety**, and must respectfully ask and pray of this Honorable Court to "**DENY**" the same and permit this case to go forward to a jury with Defendant Jerry Kelly properly included as a defendant hereto.

Respectfully submitted,

s/ James G. Akers
JAMES G. AKERS, Plaintiff
Post Office Box 3648
Brentwood, Tennessee 37024

4708 Trousdale Drive
Nashville, Tennessee 37220

Telephone: 615/834-2843
Facsimile: 615/831-9307

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CERTIFICATE OF SERVICE

COMES THE AFFIANT, Dorothy M. Mackin, and hereby certifies that: (1) I am not a party to the civil action styled "**JAMES G. AKERS, Plaintiff, V. CAROLYN P. BISHOP, et al, Defendants.**"; (2) I am a citizen of the United States of America and State of Tennessee therein; (3) I am over the age of 21; (4) to the best of my knowledge, information, and belief, I am qualified to execute service of process on behalf of Plaintiff James G. Akers; and (5) I have, on the date last written and notarized hereinbelow, served a true and complete copy of the foregoing "**RESPONSE AND OBJECTIONS TO 'MOTION OF DEFENDANT JERRY KELLY TO DISMISS OR TRANSFER' & 'MEMORANDUM IN SUPPORT [THEREOF]'**" via "UNITED STATES MAIL-FIRST CLASS" in the manner as follows:

(a) CAROLYN P. BISHOP:

Served Attorneys: COUNSEL OF RECORD:
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STATE OF TENNESSEE)
)
) **ss.**
)
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove Dorothy M. Mackin has personally appeared before me on this, the 9th day of March, 2001, has acknowledged the foregoing, and subscribed her signature thereto in my presence.

s/ Robert G. Gardner
NOTARY PUBLIC, State-at-large

My Commission Expires: 10/20/2003

EXHIBIT "USSC-11" 195

F I L E D
U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENN.

NOV 21 2000

BY _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

JAMES G. AKERS, Plaintiff,	)	FILE NUMBER: 3:00cv1142
	)	JUDGE ECHOLS
v.	)	**MEMORANDUM & MEMORANDUM OF LAW**
CAROLYN P. BISHOP; *et al*, Defendants.	)	

COMES THE PLAINTIFF, James G. Akers, **without counsel**, and, in strict accordance with provisions of **TITLE 28 U.S.C. § 1654,** files with this Honorable Court the hereinafter "MEMORANDUM & MEMORANDUM OF LAW" in further support of the accompanying and contemporaneously-filed civil action pursuant to **TITLE 18 U.S.C. § 1964(c), TITLE 42 U.S.C. § 1983, & TITLE 42 U.S.C. § 1985(3).**

A. INTRODUCTION

1. On August 25, 1993, just two (2) months preceding the twenty-fifth (25th) anniversary of his marriage to Defendant Carolyn P. Bishop (nee Carolyn J. Patrick, then Carolyn P. Akers, now Carolyn P. Bishop, and referred to hereinafter as "Bishop"), the Plaintiff, James G. Akers (hereinafter "Akers") was awarded a sizeable cash settlement on behalf of Coleman/...

Akers & Akers, Incorporated (hereinafter "C/AA"), a Kentucky corporation owned an operated by Akers and based in the Lexington, Kentucky, area. The series of outrageous events which have transpired thereafter, and as set forth hereinafter in detail, have been such that should shock the very conscience of any responsible citizen of a free and democratic society in the modern world.

2. In a manner strikingly similar to historical accounts of colonial Salem, Massachusetts; "Nazi" Germany; and "cold war era" Soviet Bloc countries, Defendant Bishop and her hereinafter named co-conspirators have devised, effectuated, and perpetuated schemes to unlawfully seize, withhold, divert, and convert the property of Akers with intent to deprive him thereof; to unlawfully circumvent and/or abridge all of Akers' inalienable and lawful rights pursuant to, ***inter alia***, **Article I-Sections 9 & 10, Article III-Section 2, Article IV-Section 2,** and the **First, Fourth, Fifth, Sixth, Eighth, Thirteenth,** and **Fourteenth Amendments** of/to the **United States Constitution** and, in both overt and covert concealment of those said schemes, to oppressively deprive Akers of his liberty in such a manner as is hereinafter set forth in detail. Those said schemes and actions of and/or by the named herein Defendants **have not been limited** to "civil rights violations" under "color of state law", "color of office", and/or "malicious prosecution" but extend, in fact, to **criminal acts** in blatant and direct violation of the Federal Laws as are hereinafter enumerated.

3. As will be hereinafter shown, in detail, the Plaintiff Akers was: (a) **assaulted, decoyed, inveigled, and robbed** in May and June of 1994 and, in the covert concealment thereof, was; (b) **unlawfully imprisoned** in May and July of 1994 and, in covert concealment thereof; (c) **blackmailed and/or extorted** from July of 1994 through March of 1995, and in further concealment thereof, was; (d) **essentially "kidnapped" and**

fraudulently held in Nashville, Tennessee, during August and September, 1995, and, in the covert concealment thereof, was; (e) **fraudulently extradited** back to Kentucky in October of 1995 and, in the **further concealment** of the hereinbefore schemes, was; (f) **fraudulently and maliciously accused, prosecuted, convicted, and then imprisoned** in custody of the Fayette County [Kentucky] Sheriff and/or Kentucky Department of Corrections from May 22, 1996, to April 15, 1998, until; (g) Akers was released from custody on a $52,000 Full Cash Bond pursuant to an "Opinion and Order", as rendered February 27, 1998, by the Kentucky Court of Appeals, which ruled that Akers' convictions and resulting imprisonment had been unlawfully achieved.

4. In the further concealment of those said schemes of/by the Defendants, and as an **intentional and continuing course of conduct** by them, Akers was: (a) **further blackmailed/ extorted** in March of 1998; was (b) **further** oppressively imprisoned in April of 1998; was (c) **further blackmailed and/or extorted** from April through October of 1998, and then; (d) **yet again, oppressively and unlawfully prosecuted, convicted, and then...**

-3-

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imprisoned for the **very same unconstitutional and fraudulent felony charges**, pursuant to the **very same unconstitutional and fraudulent indictment**, as was the case in May of 1996.

5. Following Akers' additional unlawful, oppressive, and unconstitutional imprisonment since October 28, 1998, the Court of Appeals of Kentucky rendered Its **second** "Opinion" on May 19, 2000, in which It reversed (in part) Akers' convictions **for the second time** and ruling, in hereunto relevant part, as follows:

> **"It is clear that the trial court failed to follow our instructions on remand";**
>
> **"The court heard arguments as to the admissibility of the evidence. Prior to making its ruling, the court acknowledged that it had not read our decision";**

"Without reading our decision, the court could not have followed our directives";

"While our opinion did not specifically so require, the trial court should have granted Akers separate trials on each count";

"By not holding separate trials, the trial court abused its discretion and denied Akers a fair trial...";

"Fairness and justice require us to reverse his (Akers') **conviction..."** (emphasis added)

6. Akers is **not** an attorney, and **does not** have any formal training or education in the Law. Having been forced to expend **vast resources** in defense of the hereinafter enumerated unlawful acts committed by the named Defendants, and ancillary expenses related thereto, Akers can no longer afford, nor will he seek, further assistance and/or counsel of attorneys with respect to the matters set forth herein.

B. STATEMENT OF PURPOSE AND INTENT

1. The purpose(s) and intent of the within "MEMORANDUM & MEMORANDUM OF LAW" are to: (a) expose, disclose, encapsulate, and memorialize the events leading up to, contemporaneous with, and resulting from, certain criminal prosecutions depicted as: "Commonwealth of Kentucky vs. James G. Akers" under "Indictment No. 95-CR-984"; (b) to expose and/or disclose **the truth** with respect to all issues addressed and/or raised therein; (c) to apply both the **Constitutional and Statutory Laws** of the **United States of America** as they relate thereunto those said events, criminal prosecutions, and related matters; and (d) to serve as a "foundation" for the numerous avenues for redress which Plaintiff Akers is now **forced to pursue** in ultimate resolution of said criminal prosecutions and related matters thereto.

C. CITATION OF AUTHORITIES

UNITED STATES CONSTITUTION

ARTICLE I-SECTION 9: [1.] "The **migration** or importation of such persons as any of the states...shall think proper to admit, **shall not be prohibited**...; [2.] The privilege of the writ of habeas corpus **shall not be suspended**..."; [3.] "No bill of attainer or ***ex post facto* law**[1] shall be passed." (emphasis added)

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[1] "Ex post facto law" defined: "A law passed **after the occurrence of a fact or commission of an act**, which retrospectively changes the legal consequences or relations of such fact or deed." "A law is **unconstitutionally** "**ex post facto**" if it deprives a defendant of a defense to criminal liability that he had prior to enactment of the law. State v. Rogers, Ohio Com.Pl., 346 N.E.2d 352, 361. Art. I, § 9(CL3) and § 10 of U.S. Const. prohibit both Congress and the states from passing any ex post facto law. An ex post facto law is defined as a law which provides for the ..." (continued, page 6 hereof)

ARTICLE I-SECTION 10: [1.] "**No state shall...pass any** bill of attainer, ***ex post facto* law**[1], or law impairing the obligation of contracts, or grant any title of nobility." (emphasis added)

ARTICLE III-SECTION 2: [1.] "The judicial power shall extend to all cases, **in law or equity**, arising under this constitution, the laws of the United States...; ...between citizens of different states; [3.] "The trial of **all crimes** ...shall be held...**in the state where the said crimes shall have been committed**"; (emphasis added)

ARTICLE IV-SECTION 2: [1.] "The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states"; [2.] "A person charged **in any state** with...felony, or other crime, **who shall flee from justice**, and be found in another state, shall...be delivered up, to be removed to the state having jurisdiction of the crime."[2] (emphasis added)

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[1] "Ex post facto law" defined (cont'd from page 5 hereof): "...infliction of punishment upon a person for an act done which, when it was committed, was innocent; **a law which aggravates a crime or makes it greater than when it was committed; a law that changes the punishment or inflicts a greater punishment than the law annexed to the crime when it was committed; a law that changes the rules of evidence** and receives less or different testimony than was required at the time of the commission of the offense in order to convict the offender; **a law which deprives persons accused of a crime of some lawful protection to which they have become entitled,** such as protection of a former conviction or acquittal...; **every law which,** in relation to the offense or consequences, **alters the situation of a person to his disadvantage.** Wilensky v. Fields, Fla., 267 So.2d 1, 5." [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998 (emphasis added)]

[2] "Interstate extradition involves a significant restraint of liberty and, as such, **necessitates a showing of probable cause.**" Wellington v. State of S.D., D.C.S.D.1976, 413 F.Supp., 151. (emphasis added) See Also: Walton v. State, 1977, 566 P.2d 765, 98 Idaho 422; "**Probable cause** to find that a person to be extradited is a **fugitive from justice** in demanding state is a **condition precedent to valid extradition.**" Ross v. Hegstrom, 1969, 254 A.2d 556, 107 Conn. 403 (emph. added); "**In determining whether a party named in a requisition and rendition warrant is a fugitive from justice, a finding must be made** in substance that a crime is alleged, **that the named party committed the crime and fled from the demanding jurisdiction, and it must appear that accused was within the demanding state when crime was committed** so as to constitute him a fugitive by his commission of crime and his **later flight.**" State v. Phillips, 1960,162 A.2d 113, 62 N.J.Super. 70, affirmed 167 A.2d 175, 34 N.J. 63 (emphasis added); "In extradition proceedings, inquiry is restricted to whether accused is substantially charged with crime in the demanding state, **and whether he...**" (continued, page 7 hereof)

FIRST AMENDMENT: "Congress shall make no law respecting...religion, or prohibiting the free exercise thereof; **or abridging freedom of speech...**; [or the right to] petition the government for **redress of grievances**"; (emphasis added)

FOURTH AMENDMENT: "The right of the people to be secure in their **persons**, houses, papers, and effects, against unreasonable searches and **seizures**, shall not be violated, and **no Warrants shall issue, but upon probable cause**"[2]; (emphasis added)

FIFTH AMENDMENT: "No person shall **be held** to answer for ...infamous crime, **unless on a presentment or indictment**[3] of a...

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[2] "Interstate extradition" (continued from page 6 hereof): "...**was physically in the demanding state at time crime charged is alleged to have been committed.**" People v. ex rel. Johnson v. Ruthazer, 1951, 102 N.Y.S.2d 39, 198 Misc. 1044, affirmed 105 N.Y.S.2d 394, 278 App.Div. 905 (emph. added); Clayton v. Wichael, 1966, 141 N.W. 2d 538, 258 Iowa 1037; Wigehert v. Lockhart, 1946, 166 P.2d 988, 114 Colo. 485; Ex parte Foster, 1936, 61 P.2d 37, 60 Okla.Cr. 50; "No person may be lawfully removed from one stateto another by virtue of this [Sec. 2, cl. 2], unless ...; 2. He has fled from justice; ..., and if either of these conditions are absent, the Constitution affords no warrant for a restraint of the liberty of any person." Pierce v. Creecy, Mo. 1908, 28 S.Ct. 714, 210 U.S. 387, 52 L.Ed. 1113; Ex parte Morgan, D.C.Cal. 1948, 78 F.Supp. 756, affirmed 175 F.2d 404, certiorari denied 70 S.Ct. 76, 338 U.S. 827, 94 L.Ed. 503; "Under this [Sec. 2, cl. 2] and Federal Extradition Act, 18 U.S.C.A. former § 662 [now §§ 3182, 3195], an extradition is unwarranted unless the accused is a fugitive from justice, and a 'fugitive from justice' is a person who commits a crime within a state and withdraws himself from such jurisdiction without waiting to abide the consequences of his act". Ex parte Montoya, 1943, 135 P.2d 281, 170 Or. 499. (emphasis added)

[3] "Presentment" defined: "A presentment is an accusation, initiated by the grand jury itself, and in effect is an instruction that an indictment be drawn. U.S. v. Briggs, C.A.Fla., 514 F.2d 794, 804. A written accusation of crime made and returned by the grand jury upon its own initiative in the lawful exercise of its lawful inquisitorial powers, is in the form of a bill of indictment, and in practice is signed individually by all the grand jurors who return it. State v. Hudson, Tenn.Cr.App., 487 S.W.2d 672, 674"; "Indictment" defined: "An accusation in writing found and presented by a grand jury, legally convoked and sworn, ...charging that a person therein named has done some act, or been guilty of some ommission, which by law is a public offense, punishable on indictment. A formal written accusation originating with a prosecutor and issued by a grand jury against a party charged with a crime." [Black's Law Dictionary, Sixth Edition, 12th reprint-1998 (emphasis added)]

Grand Jury, **nor shall any person be subject for the same offence to be twice put in jeopardy** of life or limb"[4]; ...**nor be deprived of...liberty**, or property, **without due process of law**"[5];

(emphasis added)

SIXTH AMENDMENT: "In **all criminal prosecutions,** the accused shall enjoy the right to a speedy and public trial, **by an impartial jury** of the **State...wherein the crime shall have been committed**..., to be informed of the nature...of the accusation; and...to have compulsory process for obtaining witnesses in his favor"; (emphasis added)

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[4] See also: North Carolina v. Pearce, 89 S.Ct. 2089 (1969), i.e., "[727] ...The theory of double jeopardy is that a person need run the gantlet only once. The gantlet is the **risk of range of punishment** which the State...imposes for that particular conduct. He risks the **maximum permissible punishment when first tried. That risk having been faced once** need not be faced again. **And the fact that he takes...**" (continued, page 9 hereof)

[5] "Due process of law" defined: "Law in its regular course of administration through courts of justice. ...Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgement upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting... every material fact which bears on the question of right in the matter involved. **If any question of fact or liability be conclusively presumed against him, this is not due process of law**. An orderly proceeding wherein a person is **served with notice,** actual or constructive, and **has an opportunity to be heard and to enforce and protect his rights** before a court having power to hear and determine the case. ...**The concept of 'due process of law' as it is embodied in the Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious**... U. S. v. Smith, D.C. Iowa, 249 F.Supp. 515, 516. Fundamental requisite of 'due process' is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest... Trinity Episcopal Corp. v. Romney, D.C.N.Y., 387 F.Supp. 1044, 1084. **Aside from all else, 'due process' means fundamental fairness and substantial justice**. Vaughn v. State, 3 Tenn. Crim. App. 54, 456 S.W.2d, 879, 883. Embodied in the due process concept are the basic rights of a defendant in criminal cases and the requisites for a fair trial. These rights and requirements have been expanded by Supreme Court decisions and include, timely notice of a hearing or trial which informs the accused of the charges against him or her; **the opportunity to confront accusers and to present evidence on one's own behalf before an impartial jury or judge**; the presumption of innocence under which **guilt must be proven** by legally obtained evidence and **the verdict must be supported by the evidence presented**; ...and **the guarantee that an individual will not be tried more than once for the same offense (double jeopardy).**" [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998 (emphasis added)]

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[4] North Carolina v. Pearce (continued from page 8 hereof): "...an appeal does not waive his constitutional defense of former jeopardy to a second prosecution. Green v. United States, 355 U.S. 184, 191-193, 78 U.S.Ct. 221, 225, 227, 2 L.Ed. 2d 199. ...It is argued that this case is different because there were two different crimes with different punishments for each one. That, however, is a matter of semantics. 'It is immaterial to the basic purpose of the constitutional provision against double jeopardy whether the Legislature divides a crime into different degrees carrying different punishments, or [728] allows the court or jury to fix different punishments for the same crime'. People v. Henderson, 60 Cal. 2d 482, 497, 35 Rptr. 77, 86, 386 P.2d 677, 686 (1963) (Traynor, J.) ...'It was established at an early date that the Fifth Amendment was designed to prevent an accused from [729] running the risk of 'double punishment'. United States v. Ewell, 383 U.S. 116, 124, 86 S.Ct. 773, 778, 15 L.Ed.2d 627. When Madison introduced to the First Congress his draft of what became the Double Jeopardy Clause, it read: 'No person shall be subject, except in cases of impeachment, to *more than one punishment* or one trial for the same offense * * *' (Emphasis supplied) 1 Annals of Cong. 434. ...'By forbidding that no person shall be subject for the same offense to be twice put in jeopardy of life or limb, [the safeguard of the Fifth Amendment against double punishment] guarded against the repitition of history by * * * punishing [a man] for an offense when he had already suffered the punishment for it.' Roberts v. United States, 320 U.S. 264, 276, 64 S.Ct. 113, 119, 88 L.Ed. 41, (Frankfurter, J., dissenting). 'The inquiry, then, is into the meaning of 'double' or 'multiple' punishment. In Ex parte Lange, 18 Wall. 163, 21 L.Ed. 872, the petitioner...[730]...had **already suffered complete punishment for his crime and could not be subjected to further sanction**: 'If there is anything settled in the jurisprudence of England and America, it is that **no man can be twice lawfully punished for the same offence.**' And though there have been some nice questions in the application of this rule to cases in which the act charged was such as to come within the definition of more than one statutory offence, there has never been any doubt of its entire and complete protection of the party when a second punishment is proposed in the same court, on the same facts, for the same statutory offence.' *Id.* at 168. ...It was not until United States v. Benz, 282 U.S. 304, 51 S.Ct. 113, 75 L.Ed. 354, that the Court clarified its position. ...'The general rule is that judgements, decrees and orders are within the control of the court during the term in which they were made. * * * The rule is not confined to civil cases, but applies to criminal [731] cases as well, *provided that the punishment not be augmented*, Ex parte Lange, 18 Wall. 163, 167-174, 21 L.Ed. 872 [additional citations ommitted]. In the present case the power of the court was exercised to mitigate the punishment, not to increase it, and thus brought within the limitation. * * * ...[733] The ban on double jeopardy has its deep roots in the history of occidental jurisprudence. 'Fear and abhorrence of government power to try people twice for the **same conduct** is one of the oldest ideas found in western civilization.' Bartkus v. Illinois, 359 U.S. 121, 151-155, 79 S.Ct. 676, 3

L.Ed.2d 684 (Black, J., dissenting). And its purposes are several. **It prevents the State from using the criminal process as an instrument of harrassment to wear the accused out** by a multitude of cases with accumulated trials. Abbate v. United States, 359 U.S. S.Ct. 666, 672-673, 3 L.Ed.2d, 72..." (continued, page 10 hereof)

EIGHTH AMENDMENT: "**Excessive bail** shall not be required, ...nor...**unusual punishments** inflicted"; (emphasis added)

THIRTEENTH AMENDMENT: "Neither slavery nor **involuntary servitude,** except as punishment for crime whereof the party shall have been **duly convicted,** shall exist within the United States or **any place** subject to their jurisdiction"; (emphasis added)

FOURTEENTH AMENDMENT: "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside. No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor...

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[4] **North Carolina v. Pearce** (continued from page 9 hereof): "...'The vice [735] of this procedure lies in relitagating the **same evidence** before two different juries with a man's innocence or guilt at stake'. ...'**Harrasment of an accused by successive prosecutions**...so as to afford the prosecution a more favorable opportunity to convict are examples when jeopardy attaches. Downum v. United States, 372 U.S. 734, 736, 83 S.Ct. 1033, 1034, 10 L.Ed.2d 100. ...'**This case presents an instance of the prosecution being allowed to harrass the accused with repeated trials and convictions on the same evidence**, until it achieves its desired result...' Ciucci v. Illinois, 356 U.S. 571, 573, 78 S.Ct. 839, 840, 2 L.Ed.2d 983. ...Manifestly it is not the danger of jeopardy of being a second time found guilty. It is the **punishment** that would legally follow the second conviction which is the real danger guarded against by the Constitution. ...It is doubtless true that the State has an interest in adjusting sentences upward [737] when it discovers new evidence warranting that result. But **the individual has an interest in remaining free of double punishment**. And in weighing those interests against one another, **the Constitution has decided the matter in favor of the individual**. See United States v. Tateo, 377 U.S. 463, 475, 84 S.Ct. 1587, 1594, 12 L.Ed.2d, 448" (emphasis added); **See also**: **Menna v. New York, 423**

U.S. 61, 96 S.Ct. 241, 46 LEd(2d) 195 (1975), i.e., "Where the State is precluded by the United States Constitution from haling a defendant into court on a charge, federal law requires that conviction to be set aside even if the conviction was entered pursuant to a counseled plea of guilty" (emphasis added); Abney v. United States, 431 US 651, 97 SCt, 52 LEd(2d) 651 (1977), i.e., "Double jeopardy clause protects an individual against more than being subjected to double punishments; it is a guarantee against being twice put to trial for the same offense. U.S.C.A. Const. Amend. 5" (emphasis added); and Fourteenth Amendment to the United States Constitution [pages 10 & 11 hereof], i.e., "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; ...nor deny any person within its jurisdiction equal protection of the laws". (emphasis added)

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deny any **person within its jurisdiction equal protection of the laws**"[6]; (emphasis added)

UNITED STATES CODES ANNOTATED

TITLE 18 U.S.C. § 2. Principals: (a) Whoever **commits** an offense against the United States or **aids, abets, counsels,** commands, **induces, or procures** its commission, **is punishable as a principal.** (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal. (emphasis added)

TITLE 18 U.S.C. § 3. Accessory after the fact: Whoever, knowing that an offense against the United States has been committed, **receives, relieves,** comforts **or assists** the offender in order to hinder or prevent his apprehension, trial or punishment, **is an accessory after the fact.** (emphasis added)

TITLE 18 U.S.C. § 4. Misprison of felony: Whoever, **having knowledge** of the actual commission of a felony cognizable by a court of the United States, **conceals and does not as soon as possible make known the same** to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years or both. (emphasis added)

TITLE 18 U.S.C. § 5. United States defined: The term "United States", as used in this title in a territorial sense,

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[6] "Equal protection of the law" defined: "The constitutional guarantee of "equal protection of the law" means that no person or class of persons shall be denied the same protection of the laws...in their lives, liberty, prop-erty, or in their pursuit of happiness. People v. Jacobs, 27 Cal.App.3d 246, 103 Cal.Rptr. 536, 543; 14th Amend., U.S. Const. ...The equal protection of the laws of a state is extended to persons within its jurisdiction...with like rules of evidence and modes of procedure, for the security of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; ...when no different or greater punishment is enforced against them for a violation of the laws." See also: "Equal protection clause", i.e., "That provision of the 14th Amendment to U.S. Constitution which prohibits a State from denying any person within its jurisdiction the equal protection of the laws. This clause requires that persons...be given equal protection in the enjoyment of personal rights and the prevention and redress of wrongs." [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998 (emphasis added)]

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includes **all places** and waters, continental or insular, **subject to the jurisdiction of the United States**, except the Canal Zone. (emphasis added)

TITLE 18 U.S.C. § 873. Blackmail: Whoever, **under threat** of informing, or as a consideration for not informing, against any law of the United States, **demands...any money or other valuable thing,** shall be fined under this title or imprisoned not more than one year, or both. (emphasis added)

TITLE 18 U.S.C. § 875. Interstate communications: (d) Whoever, **with intent to extort** from any person, firm, association, or corporation, **any money or other thing of value, transmits in interstate** or foreign commerce **any communication** containing any threat to injure the property **or reputation** of... another...**or any threat to accuse...any other person of a crime,** shall be fined under this title or imprisoned not more than two years, or both. (emphasis added)

TITLE 18 U.S.C. § 876. Mailing threatening communications: Whoever, **with intent to extort** from any person **any money or other thing of value**, knowingly so deposits or causes to be delivered, as aforesaid, **any communication,** with or without a name or designating mark subscribed thereto, addressed to any other person **containing**

any threat to accuse...any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both. (emphasis added)

TITLE 18 U.S.C. § 1201. Kidnapping: (a) Whoever, unlawfully **seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds** for ransom or reward **or otherwise** any person, except in the case of a minor by the parent thereof, when – (1) the person is **willfully transported in interstate commerce**; (2) any such act against the person is done within the special maritime jurisdiction of the United States; (b) With respect to subsection (a)(1) above, the failure to release the victim within twenty-four hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce. (c) **If two or more persons conspire to violate this section** and one or more of such persons do any covert act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life. (emphasis added)

TITLE 18 U.S.C. § 1203. Hostage taking: (a) Except as provided in subsection (b) of this section, whoever, whether inside or outside the United States, seizes or detains and threatens...to continue to detain another person in order to...

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compel a third party to do or abstain from doing any act **as an** explicit or implicit condition for the release of the person detained, or attempts **or conspires to do so**, shall be imprisoned for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment. (emphasis added)

TITLE 18 U.S.C. § 1341. Frauds[7] and swindles: Whoever, **having devised or intending to devise** any scheme or artifice to defraud, **or for obtaining money or property by means of false or fraudulent pretenses, ...or attempting so to do**, places in any post office or authorized depository for mail matter, **any matter or thing whatever** to be sent or delivered by

the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be **sent or delivered by any private** or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, **or knowingly causes to be delivered** by such carrier according to the direction thereon, or at the place at which it is directed to be delivered to the person to whom it is addressed, **any such matter or thing,** shall be fined under this title or imprisoned not more than five years, or both. (emphasis added)

TITLE 18 U.S.C. § 1503. Influencing or injuring officer or juror[8] generally: (a) Whoever **corruptly...endeavors to influence or impede any grand or petit juror,** or officer in or of any court of the United States, ...**or endeavors to influence, obstruct, or impede, the due administration of justice,** shall be punished as provided in subsection (b). (emphasis added)

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[7] "Fraud" defined: "A **false representation of a matter of fact,** whether by words or by conduct, **by false or misleading allegations, or by concealment of that which should have been disclosed,** which deceives and is intended to deceive another so that he shall act upon it to his legal injury; ...A generic term, embracing all multifarious means which human ingenuity can devise, ...to get advantage over another by false suggestions or **by suppression of the truth**...; As distinguished from negligence, **it is always positive, intentional.** It comprises **all acts, omissions, and concealments** involving a breach of a legal or equitable duty and resulting in damage to another. And includes **anything calculated to deceive,** whether it be a single act **or combination of circumstances,** whether the **suppression of truth or the suggestion of what is false,** whether it be direct falsehood or by innuendo, by speech or **by silence,** by word of mouth, **or by look or gesture.** [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]

[8] See also: **"Tampering with jury"**: "...The act of attempting to influence a juror corruptly by...persuasions, entreaties, ...or **any other means** except the production of evidence in open court. *See e.g.* 18 U.S.C.A § 1503, 1504." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]

TITLE 18 U.S.C. § 1512. Tampering[9] with a witness, victim, or an informant: (b) Whoever knowingly uses

intimidation...or corruptly persuades another person, **or attempts to do so**, or engages in misleading conduct toward another person, **with intent** to – (1) **influence**, delay, **or prevent the testimony of any person** in an official proceeding; (2) **cause or induce any person to** – (A) withhold testimony, or withhold a record, document, or other object from an official proceeding; (B) **alter**, destroy, **mutilate**, or conceal **an object with intent to impair the object's integrity** or availability in an official proceeding; shall be fined under this title or imprisoned not more than ten years, or both. (emphasis added)

TITLE 18 U.S.C. § 1961. Definitions: (1) "racketeering activity" means (A) **any act or threat** involving...kidnapping, ... robbery, bribery, extortion, ...or **which is chargeable under state law and punishable by imprisonment for more than one year**; (B) any act which is indictable under any of the following provisions of title 18, United States Code: ...section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), ...section 1503 (relating to obstruction of justice); ...section 1512 (relating to tampering with a witness, victim, or an informant); (2) "State" means **any State** of the United States, the District of Columbia, the Commonwealth of Puerto Rico, **any territory** or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof; (3) "person" includes any individual, or entity capable of holding a legal or beneficial interest in any property; (4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and **any union or group of individuals associated in fact** although not a legal entity; (5) "pattern of racketeering activity" **requires at least two acts** of racketeering activity, one of which occurred after the effective date of this chapter and at least one of which occurred within ten years after the commission of a prior act of racketeering activity; (emphasis added)

TITLE 18 U.S.C. § 1962. Prohibited activities: (a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity...in which such person has participated as a principal within the meaning of section 2, title 18, ...

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[9] "Tamper" defined: "To meddle so as to alter a thing, especially to make illegal, corrupting or perverting changes; as to tamper with a document or text; to interfere with improperly; ...To illegally change as to tamper with...a witness or victim (U.S.C.A. § 1503, et seq.)." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]

United States Code, **to use or invest, directly or indirectly, any part of such income**, in acquisition of any interest in, **or the activities of which affect**, interstate commerce; (d) It shall be unlawful for any person **to conspire** to violate any of the provisions of subsection (a), (b), or (c) of this section; (emphasis added)

TITLE 18 U.S.C. § 1964. Civil remedies: (c) **Any person injured in his business or property** by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and **shall recover threefold the damages he sustains** and the cost of the suit, including a reasonable attorney's fee...; (emphasis added)

TITLE 18 U.S.C. § 1965. Venue and process: (b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in other districts be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof; (d) All other process in any action or proceeding under this chapter may be served in any judicial district in which the person resides, is found, has an agent, or transacts his affairs;

TITLE 18 U.S.C. § 2261. Interstate domestic violence: (a) **Offenses. - (1) Crossing a State Line.** - A person who **travels** across a State line...**with intent** to injure, harass, or intimidate that person's spouse or intimate partner, **and** who, in the course of or as a result of such travel, **intentionally commits a crime of violence and thereby causes bodily injury** to such spouse or intimidate partner, shall be punished as provided in subsection (b). (emphasis added)

TITLE 18 U.S.C. § 2261A. Interstate stalking: Whoever **travels** across a State line or within the...territorial jurisdiction of the United States **with the intent** to injure or harass another person, **and** in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury (as defined in section 1365(g)(3) of this title) to, that person or a member of that person's immediate family (as defined in section 115 of this title) shall be punished as provided in section 2261 of this title. (emphasis added)

TITLE 18 U.S.C. § 2262. Interstate violation of protection order: **(a) Offenses. - (1) Crossing a State line. -** A person who travels across a State line...with the intent to engage in conduct that - **(A)(i)** violates the portion of a protective order

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that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued; or (ii) would violate this paragraph if the conduct occurred in the jurisdiction in which the order was issued; **and (B) subsequently engages in such conduct**, shall be punished as provided in subsection (b). (emphasis added)

TITLE 18 U.S.C. § 2265. Full faith and credit given to protection orders: **(a) Full faith and credit. -** Any protection order issued **that is consistent with subsection (b) of this section** by the court of one State...(the issuing State...) shall be accorded full faith and credit by the court of another State ...(the enforcing State...) and enforced as if it were the order of the enforcing State... (b) Protection order. - A protection order issued by a State...**is consistent with this subsection if –** (1) such court has **jurisdiction over the parties** and matter under the law of such State...; **and** (2) **reasonable notice and opportunity to be heard is given** to the person against whom the order is sought sufficient **to protect that person's right to due process**. In the case of ex parte orders, **notice and opportunity to be heard must be provided** within the time required by State ...law, and **in any event within a reasonable time** after the order is issued,

sufficient **to protect the respondent's due process rights**. (emphasis added)

TITLE 28 U.S.C. § 1654: In all courts of the United States, **the parties may plead and conduct their own cases personally** or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein; (emphasis added)

TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights: **Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress; (emphasis added)

TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights: (2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws**, ...

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or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy**[10, 11, 12] set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators; (emphasis

added)

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[10] "Conspiracy" defined: "A combination or confederacy between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or criminal act, or **some act which is lawful in itself, but becomes unlawful when done by the concerted action of the conspirators**, or for the purpose of using criminal or unlawful means to the commission of an act in itself unlawful. A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he: (a) agrees with other such person that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or (b) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime. Model Penal Code, § 5.03. **A conspiracy may be a continuing one; actors may drop out, and others drop in**; the details of operation may change from time to time; the members need not know each other or the part played by others; a member need not know all the details of the plan or the operations; he must, however, know the purpose of the conspiracy and agree to become a party to a plan to effectuate that purpose. **There are a number of federal statutes prohibiting specific types of conspiracy.**" [Black's Law Dictionary, Abridged Sixth Edition, 8th Reprint-1988 (emphasis added)]

[11] "*[Chain] Conspiracy*" defined: "Such a conspiracy is characterized by different activities carried on with same subject of conspiracy in chain-like manner that **each conpsirator in a chain-like manner performs a separate function which serves in the accomplishment of the overall conspiracy**." [Black's Law Dictionary, Abridged Sixth Edition, 8th Reprint-1988 (emphasis added)]

[12] "*[Civil] Conspiracy*" defined: "The essence of a 'civil conspiracy' is a concert or combination to defraud or cause other injury to person or property, which results in damage to the person or property of plaintiff." See also: "[Civil] Conspiracy" further defined: "A combination of two or more persons who, by concerted action, seek to accomplish an unlawful purpose or to accomplish some purpose, not in itself unlawful, by unlawful means." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988 (emphasis added)]

CONSTITUTION OF TENNESSEE

ARTICLE 1, SECTION 3. Freedom of worship. - "That all men have a natural and indefeasible right to worship Almighty God to the dictates of their own conscience; that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; **that no human authority can, in any case whatsoever, control or interfere with the rights of conscience**[13]; and that no preference shall ever be given to any religious establishment or mode of worship." (emphasis added)

ARTICLE 1, SECTION 8. No man to be disturbed by law. - "That **no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges**, outlawed, **or exiled or in any manner destroyed or deprived of his life, liberty, or property, but by the judgement of his peers or the law of the land.**"[14] (emphasis added)

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[13] See also: Ky Const § 1 [page 26 hereof], i.e., "Rights of life, liberty, worship, pursuit of safety and happiness, free speech, acquiring and protecting property, ...redress of grievances, bearing arms: "All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned: ...Second: The right of worshipping Almighty God according to the dictates of their consciences; ...Fourth: The right of freely communicating their thoughts and opinions (emphasis added); ARTICLE IV-SECTION 2, U. S. Constitution [supra, page 6 hereof], i.e., [1.] "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states"; U.S. Const. Amend. 14 [supra, pages 10 & 11 hereof], i.e., " All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction equal protection of the laws"; (emphasis added)

[14] See also: Ky Const § 1 [page 26 hereof], i.e., "Rights of life, liberty, worship, pursuit of safety and happiness, free speech, acquiring and protecting property, ...redress of grievances, bearing arms: "All men are, by nature, free and equal, and have certain inherent and inalienable rights, among wich may be reckoned: First: The right of enjoying and defending their lives and liberties; Third: The right of seeking and pursuing their safety and happiness; Fifth: The right of acquiring and protecting property (emphasis added); ARTICLE III-SECTION 2 [3.], U.S. CONST. [supra, page 6 hereof], i.e., "The

trial of all crimes...shall be held...in the state where the said crimes shall have been committed" (emph. added); **ARTICLE IV-SECTION 2 [1.], U.S. CONST.** [supra, page 6 hereof], i.e., "The citizens of each state shall be entitled to all privileges and immunities..." (continued, page 19 hereof)

ARTICLE 1, SECTION 10. Double jeopardy prohibited - "That **no person shall**, for the same offence, **be twice put in jeopardy** of life or limb."[15] (emphasis added)

ARTICLE 1, SECTION 14. Prerequisites to criminal charge. - "That **no man shall be put to answer any criminal charge** <u>but by presentment, indictment</u>[16] **or impeachment**." (emphasis added)

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[14] **ARTICLE IV-SECTION 2 [1.], U.S. CONST.** (continued from page 18 hereof): "...of citizens in the several states"; **U.S. Const. Amend. 4** [supra, page 6 hereof], i.e., "The right of the people to be secure in their **persons**, houses, papers, and effects, against unreasonable searches and **seizures**, shall not be violated, and **no Warrants shall issue, but upon probable cause**" (emphasis added); and **U.S. Const. Amend. 14** [supra, pages 10 & 11 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall** <u>any state</u> **deprive any person of life, liberty, or property, without** <u>due process of law</u>; nor deny any **person within its jurisdiction** <u>equal protection of the laws.</u>" (emphasis added)

[15] <u>See also</u>: **Ky Const § 13** [page 27 hereof], i.e., "**No person shall**, for the same offense, **be twice put in jeopardy** of his life and limb..." (emphasis added); **U.S. Const. Amend. 14** [supra, pages 10 & 11 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall** <u>any state</u> **deprive any person of life, liberty, or property, without** <u>due process of law</u>; nor deny any **person within its jurisdiction** <u>equal protection of the laws.</u>" (emphasis added)

[16] <u>See also</u>: **Ky Const § 12** [page 27 hereof], i.e., "No person, **for an indictable offense**, shall be proceeded against criminally by information ..., or by leave of court for oppression or misdemeanor in office" (emphasis added); **U.S. Const. Amend. 5** [supra, pages 7 & 8], i.e., "No person shall **be held** to answer for...infamous crime, **unless on a presentment or indictment** of a Grand Jury,

...**nor be deprived of...liberty**, or property, **without due process of law**" (emph. added); and **U.S. Const. Amend. 14** [supra, pages 10 & 11 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws.**" (emphasis added)

ARTICLE 1, SECTION 15. Bailable offenses - Habeas corpus -"That **all prisoners shall be bailable by sufficient sureties**, unless for capital offences, when the proof is evident, or the presumption great. And **the writ of Habeas corpus shall not be suspended**, unless in case of rebellion or invasion, the General Assembly shall declare the public safety requires it.[17] (emphasis added)

ARTICLE 1, SECTION 16. Restrictions on bail, fines and punishment - "That **excessive bail shall not be required**, nor excessive fines imposed, **no cruel and unusual punishments inflicted**."[17] (emphasis added)

ARTICLE 1, SECTION 19. Freedom of speech and press. - "That ...**[t]he free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may speak, write, and print on any subject**[18], being responsible for the abuse of that liberty. ..." (emphasis added)

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[17] See also: "**Ky Const § 16** [page 27 hereof], i.e., "**Right to bail; habeas corpus: "All prisoners shall be bailable** by sufficient securities, unless for capital offenses when the proof is evident or the presumption is great; and **the privilege of the writ of habeas corpus shall not be suspended** unless when, in case of rebellion or invasion, the public safety may require it." (emphasis added); **ARTICLE I-SECTION 9, U. S. Constitution** [supra, page 5 hereof], i.e., "[2.] The privilege of the writ of habeas corpus **shall not be suspended**..." (emphasis added); **ARTICLE IV-SECTION 2, U. S. Constitution** [supra, page 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emphasis added); **U.S. Const. Amend. 8** [supra, page 10 hereof], i.e., "**Excessive bail** shall not be required,

nor...**unusual punishments** inflicted" (emphasis added); and **U.S. Const. Amend. 14** [supra, pages 10 & 11 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws.**" (emphasis added)

[18] See also: **ARTICLE 1, SECTION 3. Freedom of worship, Tenn. Const.** [supra, page 18 hereof], i.e., "That all men have a natural and indefeasible right to worship Almighty God to the dictates of their own conscience; that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; **that no human authority can, in any case whatsoever, control or interfere with the rights of conscience**; ..." (emphasis added); footnote [13] thereto [id., page 17]; and hereinafter paragraphs E-4 thru E-6, E-19 thru E-22, E-24, E-28(b), & E-53 thru E-60.

TENNESSEE CRIMINAL CODE

39-17-308. Harassment. - "(a) A person commits an offense who **intentionally**: (2) **Places one (1) or more telephone calls** anonymously, or at an inconvenient hour, or **in an offensively repetitious manner**, or **without a legitimate purpose of communication, and by this action knowingly annoys or alarms the recipient;**[19] (b) **A violation of this section is a Class A misdemeanor**." (emphasis added)

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[19] See hereinafter paragraphs E-43, E-45, E-56 thru E-58, E-60 thru E-64, E-67, & E-68. See also: **ARTICLE I-SECTION 10**, U.S. Constitution [supra, page 6 hereof, i.e., "[1.] **No state shall...pass any...*ex post facto* law**, or law impairing the obligation of contracts..." (emphasis added); **ARTICLE IV- SECTION 2**, U.S. Constitution [supra page 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states..." (emphasis added); **U.S. Const. Amend. 1** [supra, page 7 hereof], i.e., "Congress shall make no law respecting...religion, or prohibiting the free exercise thereof; **or abridging freedom of speech...**" (emphasis added); **U.S. Const. Amend. 14** [supra, pages 10 & 11 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United

States..." (emphasis added); **ARTICLE 1, SECTION 3, Constitution of Tennessee** [supra, page 17 hereof], i.e., "That all men have a natural and indefeasible right to worship Almighty God to the dictates of their own conscience; ...**that no human authority can, in any case whatsoever, control or interfere with the rights of conscience**" (emphasis added); **ARTICLE 1, SECTION 19, Constitution of Tennessee** [supra, page 20 hereof], i.e., "That ...**[t]he free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may speak, write, and print on any subject**, being responsible for the abuse of that liberty. ..." (emphasis added); **Ky Const § 5** [supra, page 26 hereof], i.e., "...**the civil rights, privileges or capacities of no person shall be taken away, or in anywise diminished or enlarged,** on account of his belief or disbelief of any religious tenet, dogma or teaching. **No human authority shall,** in any case whatever, **control or interfere with the rights of conscience**" (emphasis added); **Ky Const § 8** [supra, page 26 hereof], i.e., "...**every person may freely speak, write and print on any subject**, being responsible for the abuse of that liberty" (emphasis added); **Ky Const § 19** [supra, page 27 hereof], i.e., "(1) No **ex post facto** law, ...shall be enacted" (emphasis added); **Ky Const § 24** [supra, page 28 hereof], i.e., "**Emigration** from the State **shall not be prohibited**" (emphasis added); and **Ky Const § 26** [id.]: "To guard against transgression of the high powers we have delegated, We Declare that **every thing in this bill of rights is excepted out of the general powers of government and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void.**" (emphasis added)

39-17-309. Civil rights intimidation. - "(a) The general assembly finds and declares that **it is the right of every person regardless of race, color,** ancestry, or national origin, **to be secure and protected from fear, intimidation, harassment and bodily injury caused by the activities of groups and individuals. It is not the intent of this section to interfere with the exercise of rights protected by the constitution of the United States.** The general assembly recognizes the constitutional **right of every citizen to harbor and express beliefs on any subject**[20] and to associate with others who share similar beliefs. The general assembly further finds that the advocacy of unlawful acts by groups or individuals against other persons or groups for the purpose of inciting and provoking damage to property and bodily injury or death to persons is not constitutionally protected, poses a threat to public order and safety, and should be subject to criminal sanctions.

(b) **A person commits the offense of intimidating others from exercising civil rights who:** (1) Injures or threatens to injure or **coerces another person with the intent to unlawfully intimidate another from the free exercise or enjoyment of any right or privilege secured by the constitution or laws of the state of Tennessee;**[21]

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[20] See hereinbefore footnote [19] [supra, page 21 hereof].

[21] See: Tennessee Constitution: **ARTICLE 1, SECTION 3. Freedom of worship** [supra, page 18 hereof], i.e, "That all men have a natural and indefeasible right to worship Almighty God to the dictates of their own conscience; ...**that no human authority can, in any case whatsoever, control or interfere with the rights of conscience**" (emphasis added); **ARTICLE 1, SECTION 8. No man to be disturbed by law** [supra, page 18 hereof], i.e, "That **no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges**, outlawed, or exiled **or in any manner destroyed or deprived of his life, liberty, or property, but by the judgement of his peers or the law of the land**" (emphasis added); **ARTICLE 1, SECTION 10. Double jeopardy prohibited** [supra, page 19 hereof], i.e., "That **no person shall**, for the same offence, **be twice put in jeopardy** of life or limb" (emphasis added); **ARTICLE 1, SECTION 14. Prerequisites to criminal charge** [supra, page 19 hereof], i.e., "That **no man shall be put to answer any criminal charge but by presentment, indictment or impeachment**" (emphasis added); **ARTICLE 1, SECTION 15. Bailable offenses - Habeas corpus** [supra, page 20 hereof], i.e., "That **all prisoners shall be bailable by sufficient sureties**, ...And **the writ of Habeas corpus shall not be suspended**, unless in case of rebellion or invasion, the General Assembly shall declare the public safety requires it" (emphasis added); **ARTICLE 1, SECTION 16. Restrictions on bail, fines and punishment** [supra, page 20 hereof], i.e., "That **excessive bail shall not be required**, nor excessive fines imposed, **no cruel and unusual punishments inflicted**" (emphasis added); and **ARTICLE 1, SECTION 19. Freedom of speech...** [supra, page 20 hereof], i.e., "That..." (continued, page 23 hereof)

[or] (2) Injures or **threatens to injure or coerces another person with the intent to unlawfully intimidate another because that other exercised any right or privilege secured by the constitution or laws of the United States**[22] **or the constitution or laws of the state of Tennessee;** ...(d) **A violation of**

subsection (b) is a Class D felony." (emphasis added)

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[21] Tennessee Constitution (continued from page 22 hereof): "...[t]he free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may speak, write, and print on any subject, being responsible for the abuse of that liberty." (emphasis added)

[22] See: **ARTICLE I-SECTION 9, U.S. Constitution** [supra, page 5 hereof], i.e., "[1.] The **migration** or importation of such persons as any of the states...shall think proper to admit, **shall not be prohibited**...; [2.] The privilege of the writ of habeas corpus **shall not be suspended**..."; [3.] "No bill of attainer or ***ex post facto* law** shall be passed." (emphasis added); **ARTICLE I - SECTION 10**, U.S. Constitution [supra, page 6 hereof], i.e., "[1.] **No state shall...pass any...*ex post facto* law**, or law impairing the obligation of contracts..." (emphasis added); **ARTICLE III-SECTION 2**, U.S. Constitution [supra, page 6 hereof], i.e., "[3.] "The trial of **all crimes**...shall be held ...**in the state where the said crimes shall have been committed**" (emphasis added); **ARTICLE IV-SECTION 2, U.S. Constitution [supra, page** 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states"; **U.S. Const. Amend. 4** [supra, page 7 hereof], i.e., "The right of the people to be secure in their **persons**, houses, papers, and effects, against unreasonable searches and **seizures**, shall not be violated, and **no Warrants shall issue, but upon probable cause**" (emphasis added); **U.S. Const. Amend. 5** [supra, pages 7 & 8 hereof], i.e., "No person shall **be held** to answer for...infamous crime, **unless on a presentment or indictment** of a Grand Jury, **nor shall any person be subject for the same offence to be twice put in jeopardy** of life or limb"; ...**nor be deprived of**...**liberty**, or property, **without due process of law**" (emphasis added); **U.S. Const. Amend 6** [supra, page 8 hereof], i.e., "In **all criminal prosecutions**, the accused shall enjoy the right to a speedy and public trial, **by an impartial jury** of the **State...wherein the crime shall have been committed**..., to be informed of the nature...of the accusation; and...to have compulsory process for obtaining witnesses in his favor" (emph. added); **U.S. Const. Amend 8** [supra, page 10 hereof], i.e., "**Excessive bail** shall not be required, ...nor...**unusual punishments** inflicted" (emph. added); **U.S. Const. Amend 13** [supra, page 10 hereof], i.e., "Neither slavery nor **involuntary servitude**, except as punishment for crime whereof the party shall have been **duly convicted**, shall exist within the United States or **any place** subject to their jurisdiction" (emphasis added); **U.S. Const. Amend. 14** [supra, pages 10 & 11 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the..." (continued, page 24 hereof)

40-9-118. Authority given by governor's warrant. - "(a) **The warrant shall authorize the officer or other person to whom directed** to arrest the accused at any place where the accused may be found within [Tennessee] and to command the aid of all sheriffs and other peace officers in the execution of the warrant, and **to deliver the accused, subject to the provisions of this chapter[23], to the duly-authorized agent of the demanding state.**" (emphasis added)

40-9-119. Information to person arrested - Habeas corpus. - "**No person arrested upon such a warrant shall be delivered over to the agent whom the executive authority demanding the person has appointed** to receive the person, **unless the person has been informed of the crime with which the person is charged,** and that the person has the right to demand legal counsel. **If the prisoner, the prisoner's friends or counsel shall state that the person or they desire to test the legality of the arrest[24], the prisoner shall be taken forthwith before a judge of a court of...**

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[22] **U.S. Const. Amend. 14** (continued from page 23 hereof): "...the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law;** nor deny any **person within its jurisdiction equal protection of the laws**" (emph. added); **TITLE 18 U.S.C. § 873. Blackmail** [supra, page 12 hereof], i.e., "Whoever, **under threat** of informing, or as a consideration for not informing, against any law of the United States, **demands...any money or other valuable thing,** shall be fined under this title or imprisoned not more than one year, or both." (emphasis added) [see, e.g., hereinafter paragraphs E-16, E-24, & E-50(e)]; **TITLE 18 U.S.C. § 875. Interstate communications** [supra, page 12 hereof], i.e., "(d) Whoever, **with intent to extort** from any person, firm, association, or corporation, any **money or other thing of value, transmits in interstate** or foreign commerce **any communication** containing any threat to injure the property **or reputation** of...another...**or any threat to accuse...any other person of a crime,** shall be fined under this title or imprisoned not more than two years, or both" (emphasis added) [see, e.g., hereinafter paragraphs E-16, E-24, & E-56]; Hereinafter paragraphs E-61, E-62, E-64, E-67. E-68, & E-70 through E-81; and, *et al*, CP#1, L. Red Corn, 05/29/98, 14:22:30 and D. Tapp, et seq.

[23] See **Tennessee Code Annotated 40-9-119** and corresponding footnotes [24] & [25].

[24] See hereinafter paragraphs 76 & 77; Footnote [75], esp., **State v. Phillips, 1960,**

162 A.2d 113, 62 N.J.Super. 70, affirmed 167 A.2d 175, 34 N.J. 63; People v. ex rel. Johnson v. Ruthazer, 1951, 102 N.Y.S.2d 39, 198 Misc. 1044, affirmed 105 N.Y.S.2d 394, 278 App.Div. 905; Pierce v. Creecy, Mo. 1908, 28 S.Ct. 714, 210 U.S. 387, 52 L.Ed. 1113; Ex parte Morgan, D.C.Cal. 1948, 78 F.Supp. 756, affirmed 175 F.2d 404, certiorari denied 70 S.Ct. 76, 338 U.S. 827, 94 L.Ed.503; and CP#1, C. Perkins, 11/10/95, 13:11:11, et seq.

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record in [Tennessee], who shall fix a reasonable time to be allowed the prisoner within which to apply for a writ of habeas corpus[25]. When such writ is applied for, notice thereof, and the time and place of hearing thereon, shall be given to the public prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the agent of the demanding state." (emphasis added)

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[25] See hereinafter paragraphs 76 & 77, esp., CP#1, C. Perkins, 11/10/95, 13:11:11, et seq.; "Akers and his attorney were prepared to challenge, by writ of habeas corpus, Akers "fugitive" status and the validity of the charges in Kentucky [see Exhibit "JJ" hereto]. Akers was immediately arrested, however, before the Judge was brought in and Court was even convened. Akers was then remanded to custody until extradited to Fayette County, Kentucky, on October 2, 1995, notwithstanding the best efforts of Akers and his attorneys to resolve/discharge all matters amicably. [see Collective Exhibit "KK"]; and Footnote [75], i.e., "Interstate extradition involves a significant...restraint of liberty and, as such, necessitates a showing of probable cause." Wellington v. State of S.D., D.C.S.D.1976, 413 F.Supp., 151. (emphasis added) See Also: Walton v. State, 1977, 566 P.2d 765, 98 Idaho 422; "Probable cause to find that a person to be extradited is a fugitive from justice in demanding state is a condition precedent to valid extradition." Ross v. Hegstrom, 1969, 254 A.2d. 556, 107 Conn. 403 (emphasis added); "In determining whether a party named in a requisition and rendition warrant is a fugitive from justice, a finding must be made in substance that a crime is alleged, that the named party committed the crime and fled from the demanding jurisdiction, and it must appear that accused was within the demanding state when crime was committed so as to constitute him a fugitive by his commission of crime and his later flight." Clayton v. Wichael, 1966, 141 N.W.2d 538, 258 Iowa 1037; Wigehert v. Lockhart, 1946, 66 P.2d 988, 114 Colo. 485; Ex parte Foster, 1936, 61 P.2d 37, 60 Okla.Cr. 50; "Under this [Sec. 2, cl. 2] and Federal Extradition Act, 18 U.S.C.A. former § 662 [now §§ 3182, 3195], an extradition is unwarranted unless the accused is a fugitive from justice, and a 'fugitive from justice' is a person who commits a crime within a state and withdraws himself from such jurisdiction

without waiting to abide the consequences of his act". Ex parte Montoya, 1943, 135 P.2d 281, 170 Or. 499. (It is apparent that the Kentucky authorities relied on Kentucky v. Dennison, 1861, 65 U.S. 66, 24 How. 66, 16 L.Ed. 717; Appleyard v. Massachusetts, Mass1906, 27 S.Ct. 122, 203 U.S. 222, 51 L.Ed. 161; Ex parte Williams, 1946, 21 N.W.2d, 593, 71 S.D. 95; Olson v. Thurston, Me.1978, 393 A.2d 1320; and, especially, Com. ex rel. Marshall v. Gedney, 1975, 352 A.2d 528, 237 Pa.Super. 372, affirmed 386 A.2d 942, 478 Pa. 299, as authorities for Akers' extradition. Those cases, however, do not encompass, *inter alia*, "fraud", "conspiracy", and/or "malice", which is defined as: "The intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or under circumstances that the law will imply an evil intent." [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998, emphasis added].)

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CONSTITUTION OF KENTUCKY

Ky Const § 1. Rights of life, liberty, worship, pursuit of safety and happiness, free speech, acquiring and protecting property, ...redress of grievances, bearing arms: "**All men** are, by nature, free and equal, and **have certain inherent and inalienable rights**, among which may be reckoned: **First**: The right of enjoying and **defending their** lives and **liberties**; **Second**: The right of worshipping Almighty God **according to the dictates of their consciences**; **Third**: The right of seeking and pursuing their safety and happiness; **Fourth**: The right of **freely communicating their thoughts and opinions**; **Fifth**: The right of acquiring and **protecting property**; ...**Seventh**: The right to bear arms in defense of themselves..."; (emphasis added)

Ky Const § 2. Absolute and arbitrary power denied: "Absolute and arbitrary power over the lives, liberty and property of **freemen exists nowhere in a republic, not even in the largest majority**." (emphasis added)

Ky Const § 3. Men are equal...: "All men, ...are equal; and **no grant of exclusive...privileges shall be made to any man or set of men**..." (emphasis added)

Ky Const § 5. Right to religious freedom: "**No preference shall ever be given by law to any religious sect, society or denomination; ...and the civil rights, privileges or capacities of no person shall be** taken away, **or in anywise diminished or enlarged,** on account of his belief or disbelief of

any religious tenet, dogma or teaching. **No human authority shall,** in any case whatever, **control or interfere with the rights of conscience**"; (emphasis added)

Ky Const § 8. Freedom of speech and of the press: "... **every person may freely speak, write and print** on any subject, being responsible for the abuse of that liberty." (emph. added)

Ky Const § 10. Security from search and seizure; conditions of issuance of warrant: "The people shall be secure in their persons, houses, papers and possessions, from unreasonable search and seizures; and **no warrant shall issue to search any place, or seize any person or thing,** without describing them as nearly as may be, nor **without probable cause** supported by oath or affirmation." (emphasis added)

Ky Const § 12: "No person, **for an indictable offense,** shall be proceeded against criminally by information..., or by leave of court for oppression or misdemeanor in office"; (emphasis added)

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Ky Const § 13: "**No person shall,** for the same offense, **be twice put in jeopardy**[26] of his life and limb..."; (emphasis)

Ky Const § 15. Laws to be suspended only by General Assembly: "No power to suspend laws shall be exercised unless by the General Assembly or its authority." (emphasis added)

Ky Const § 16. Right to bail; habeas corpus: "All prisoners shall be bailable[27] by sufficient securities, unless for capital offenses when the proof is evident or the presumption is great; **and the privilege of the writ of habeas corpus shall not be suspended** unless when, in case of rebellion or invasion, the public safety may require it." (emphasis added)

Ky Const § 17. Excessive bail or fine, or cruel punishment, prohibited: "Excessive bail shall not be required[27], nor **cruel punishment inflicted.**" (emphasis added)

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[26] See also: **Fifth Amendment, U. S. Constitution** [supra, page 6 hereof]; **Sherley v. Commonwealth, 558 SW(2d) 615 (Ky 1977),** i.e., "Where

Commonwealth used the **same evidence** of force causing serious physical injury to elevate offense..., defendant was placed in double jeopardy by conviction of first degree assault on the basis of the same physical injury; ...K.R.S. 505.020, 506.010(4)(a), 508.101(1)(a), 510.040(1)(b), (2)" (emphasis added); **Crawley v. Kunzman, 585 SW(2d) 387 (Ky 1979)**, i.e., "[R]ight of appeal is not [an] adequate remedy against double jeopardy. U.S.C.A. Const. Amend. 5" (emphasis added); and **Klee v. Lair, 621 SW(2d) 892, (Ky 1981)**, i.e., "[D]efendant's having been found guilty of **lesser included offense**...would **prohibit** him from being tried a second time for major offense." (emphasis added)

[27] See hereinafter paragraphs E-83, E-90, E-98, E-99, E-111, E-112 through E-114, E-119, & E-121. **See also, Commonwealth v. Hardin, S.W.2d 498 (1958)**, i.e., "What is the purpose of an appeal in any criminal case? It is to avoid the consequences of conviction. So it is with this appeal. It differs from other appeals, only as to grounds presented for reversal and the manner of presentation, not in purpose. **It is therefore the opinion of this Court that the defendant was entitled to bond pending appeal and the law is so certified.**" (emph. added); **Kentucky Criminal Practice § 11.09 Modification or revocation of bail**, i.e., "In **Marcum v Broughton**, the Court held that after bond has been set by the court, the bond may not be increased or revoked without a change in the defendant's status. The Court stated that **increasing the bond without any reason would be an arbitrary action in violation of § 2 of the Constitution of Kentucky**" (emphasis added); and **Kentucky Criminal Practice § 11.10 Termination of right to bail by operation of law**, i.e., "The setting aside of the judgement of conviction and remanding for a new trial would place the defendant in the same position as he was prior to conviction, thus raising a good ground for reducing the amount of the bail to the pre-conviction level."

Ky Const § 19 (1): "No **ex post facto** law, ...shall be enacted"[28]; (emphasis added)

Ky Const § 24: "**Emigration** from the State **shall not be prohibited**";[29] (emphasis added)

Ky Const § 26: "To guard against transgression of the high powers we have delegated[30], We Declare that **every thing in this bill of rights is excepted out of the general powers of government and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void**."[30] (emphasis added)

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[28] See also: **ARTICLE I-SECTION 9**, U.S. Constitution [supra, page 6 hereof],

i.e., "[3.] No bill of attainer or ***ex post facto*** **law** shall be passed." (emph. added) and footnote [1] thereto, i.e., "Ex post facto law" defined: "A law passed **after the occurrence of a fact or commission of an act**, which retrospectively changes the legal consequences or relations of such fact or deed." "A law is unconstitutionally **"ex post facto"** if it deprives a defendant of a defense to criminal liability that he had prior to enactment of the law. State v. Rogers, Ohio Com.Pl., 346 N.E.2d 352, 361..." (emphasis added); and hereinafter paragraphs E-4, E-12, E-54, E-98, & E-117, ***inter alia***.

[29] See also: **ARTICLE I-SECTION 9**, U.S. Constitution [supra, page 5 hereof], i.e., "[1.] The **migration** or importation of such persons as any of the states ...shall think proper to admit, **shall not be prohibited**..." (emphasis added); **ARTICLE IV-SECTION 2**, U.S. Constitution [supra, page 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emphasis added); **U.S. Const. Amend. 14** [supra, page 10 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside. No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws**" (emphasis added); **ARTICLE 1, SECTION 8, Constitution of Tennessee** [supra, page 18 hereof], i.e., "That **no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges**, outlawed, or exiled **or in any manner destroyed or deprived of his life, liberty, or property, but by the judgement of his peers or the law of the land**" (emphasis added); and hereinafter paragraphs E-47, E-50(g), E-51 through E-55, & E-59.

[30] **These very same concerns, and safeguards against them**, were addressed by United States Supreme Court Justices Douglas & Marshall in landmark decision **North Carolina v. Pearce, 89 S.Ct. 2089 (1969)** [supra, page 6 hereof]. **See also: 801 SW(2d) 321 (Ky 1990), Ingram v Commonwealth**, i.e., **"The Kentucky Constitution is superordinate to legislative intent..."** (emphasis added)

KENTUCKY REVISED STATUTES

403.715 Interpretation of KRS 403.715 to 403.785 by court: "KRS 403.715 to 403.785 shall be interpreted by the courts of the Commonwealth to effectuate the following legislative purposes: (1) To allow persons who are the victims of domestic violence and abuse to obtain short-term protection against further domestic violence and abuse in order that their lives will be as secure and as uninterrupted as possible;"

403.720 Definitions for KRS 403.715 to 403.785: "As used in KRS 403.715 to 403.785: (1) '**Domestic violence** and abuse' **means physical injury, serious physical injury**, sexual abuse, **or assault between family members** or members of an unmarried couple; (2) '**Family member**' **means a spouse**, a parent, a child, a stepchild, or any other person related by consanguinity or affinity..." (emphasis added)

403.725 Petition, who may file, protective orders: "(1) Any family member or member of an unmaried couple who is a resident of this state or who...fled to this state to escape domestic violence or abuse may file a verified petition in the District Court of the county in which he resides."

403.735 Review by court; access to emergency protective orders; local protocol in domestic violence matters; time at which orders of protection take effect: "(1) Upon filing of a petition, as provided for in KRS.725, the court, after review of the petition and determining that domestic violence and abuse exists, and without a jury, shall utilize one of the alternatives provided for in KRS 403.740 or 403.745."

403.740 Emergency protective order: "(1) If, upon review of the petition, as provided for in KRS 403.735, the court determines that the allegations contained therein indicate the presence of an immediate and present danger of domestic violence and abuse, the court shall issue, upon proper motion, ex parte, an emergency protective order: (a) Restraining the adverse party from...contact or communication with the petitioner except as directed by the court; (b) Restraining the adverse party from committing further acts of domestic violence and abuse; (c) Restraining the adverse party from disposing of or damaging any property of the parties; (d) Directing the adverse party to vacate the residence shared by the parties to the action; ...or (f) Enter other orders the court believes will be of assistance in eliminating future acts of domestic violence and abuse; or any combination thereof."

403.745 Hearing: "(3) The summons, together with a copy of the order fixing the date of the hearing and a copy of the

petition, **shall be personally served upon the adverse party**... in the manner and by the persons authorized to serve subpoenas under...Rule 45.03 of the Rules of Civil Procedure." (emphasis added)

403.750 Court Orders: "(1) Following the hearing provided for under KRS 403.745, the court, if it finds, from a preponderance of the evidence, that an act or acts of domestic violence and abuse have occurred and may again occur, may: (a) Restrain the adverse party from committing further acts of domestic violence and abuse; (b) Restrain the adverse party from disposing of or damaging any of the property of the parties; (c) Direct the adverse party to vacate the residence shared by the parties to the action; (f) Direct that either or both parties receive counseling services in the community; (g) Enter other such orders as the court believes will be of assistance in eliminating future acts of domestic violence and abuse; and (2) **Any order entered pursuant to this section shall be in effect for a period of time**, fixed by the court, **not to exceed one year.**"[31] (emphasis added)

403.7505 (2): "(a) **'Domestic violence'** is a pattern of coercive control which **includes physical**, sexual, psychological, and environmental **abuse, and is considered criminal conduct;**" (emphasis added)

403.760 Contempt of court: "(1) **Violation of the terms or conditions of an order under the provisions of KRS 403.740 or 403.750**, whether an emergency protective order, or an order following hearing, after service of the order on the respondent, or notice to the respondent, **shall constitute contempt of court**; (5) **Civil proceedings and criminal proceedings are mutually-exclusive. Once either has been initiated, the other may not be undertaken regardless of the outcome of the original proceeding**. (emphasis added)

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[31] **Note**: The herein provisions of KRS 403.750 were in effect **at all times relevant to Akers' case**, but were subsequently revised on 7-15-96 (see 1996 c 99, § 2) See also: Fourteenth Amendment, U.S. Constitution [supra, page 10 hereof] and Ky Const § 19 (1) [supra, page 28 hereof]; and K.R.S. 505. 020(1)(a)& (c) [page 16 hereof], i.e., "[w]hen a **single course of conduct** of a defendant may establish the commission of more than one offense, he may be prosecuted for

each such offense. **He may not, however, be convicted of more than one offense when**: (a) **One offense is included in the other...**; or (b) Inconsistent findings of fact are required to establish the commission of the offenses; or (c) **The offense is designed to prohibit a continuing course of conduct** and the defendant's conduct was uninterrupted by legal process." (emphasis added)

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403.780 Testimony not admissible in criminal proceeding: "**Testimony offered by an adverse party** in a hearing held pursuant to the provisions of 403.745 **shall not be admissible in any criminal proceeding involving the same parties.**" (emphasis added)

500.050 Time limitations: "(1) Unless otherwise expressly provided, the prosecution of **a felony is not subject to a period of limitation** and may be commenced at any time. (2) Except as otherwise specifically provided, the **prosecution of an offense other than a felony must be commenced within one year after it is committed.**" (emphasis added)

500.060 Territorial applicability: "(1) **Except as otherwise provided in this section,** a person may be convicted under the law of [Kentucky] of an offense committed by his own conduct ...when: (a) Either the conduct or the result which is an element of the offense occurs within [Kentucky]; (2) **Subsection (1)(a) does not apply if causing a particular result is an element of an offense and the result is caused by conduct occurring outside [Kentucky]** [and] would not constitute and offense if the result had occurred [in the other state] – unless the actor intentionally or knowingly caused the result in [Kentucky]. (emphasis and interpretation/clarification added)[32]

500.070 Burden of proof; defenses: "(2) **No Court can require notice of a defense prior to trial time**." (emph. added)

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[32] See also: **COMMENTARY, Kentucky Crime Commission/LRC, 1974**: "The provisions of this statute, initially proposed in the Model Penal Code, seek to deal with the power of a state to prosecute criminal conduct that has an interstate character. The common law rule has been stated as follows: At common law a prosecution could not be brought except for an offense of the 'gist' of which occurred within the prosecuting jurisdiction. ...Subsection [K.R.S.

505.080(1)](2) seeks to minimize the difficulty with imposing penal sanctions on conduct that cause a result that is criminal in [Kentucky] but noncriminal in the state in which the conduct occurs. The justification for this provision was best explained by the drafter of the Proposed Delaware Code:" ..."While the intention of the section is to extend Delaware's jurisdictions as widely as it may constitutionally be extended, we believe that it would be wrong to attempt to cover conduct which unintentionally produces a result in Delaware, at least when the result would have been lawful had it occurred where it was intended to occur. Proposed Delaware Penal Code § 8, Commentary (1967)"; "Vagueness Doctrine" defined: "Under this doctrine, a law, (e.g., criminal statute) which does not fairly inform an ordinary person of what is commanded or prohibited is unconstitutional as violative of due process. The doctrine originates in the due process clause of the Fourteenth Amendment, and is basis for striking down..." (continued, page 32 hereof)

500.080 Definitions for Kentucky Penal Code: "As used in the Kentucky Penal Code, unless the context otherwise requires: (3) **'Dangerous instrument' means any instrument**, including parts of the human body when a serious physical injury is a result of the use of that part of the human body...**which, under the circumstances in which it is used, attempted to be used, or threatened to be used is readily capable of causing death or serious physical injury**; (5) 'Felony' means an offense for which a sentence to a term of imprisonment of at least one year in the custody of the Department of Corrections may be imposed; (7) 'He' means any natural person and, where relevant, a corporation or an unincorporated association; (13) **'Physical injury' means substantial physical pain or any impairment of physical condition**; (15) **'Serious physical injury' means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, or prolonged impairment of the function of any bodily organ.**" (emphasis added)

505.010 Entrapment; "A person is not guilty of an offense arising out of a proscribed conduct **when**: (a) **He was induced or encouraged** to engage in that conduct by a public servant or **by a person acting in cooperation with a public servant seeking to obtain evidence against him for the purpose**

of a criminal prosecution; and (b) At the time of the inducement or encouragement, **he was not otherwise disposed to engage in such conduct.** (emphasis added)

505.020 Prosecution for multiple offenses; K.R.S. Title 50-Kentucky Penal Code: "(1) When a **single course of conduct** of a defendant may establish the commission of more than one offense, he may be prosecuted for each such offense. **He may not, however, be convicted of more than one offense when:** (a)

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[32] **"Vagueness Doctrine"** (continued from page 31 hereof): "...legislation which contains **insufficient warning of what conduct is unlawful.** McCrary v. State, Ala.Crim.App., 429 So.2d 1121, 1123. **It requires that penal statutes give notice to [an] ordinary person of what is prohibited and provide definite standards** to guide discretionary actions of police officers so as to **prevent arbitrary and discriminatory law enforcement.** Porta v. Mayor, City of Omaha, Neb., D.C.Neb., 593 F.Supp. 863, 865; **See also Vague; Void for vagueness doctrine:** "A law which is so obscure in its promulgation that a reasonable person could not determine from a reading what the law purports to command or prohibit is violative of due process. The doctrine means that criminal responsibility should not attach where on e could not reasonably understand that his contemplated conduct is proscribed. U.S. v. National Dairy Products Corp., Mo., 83 S.Ct. 594, 598, 372 U.S. 29, 91 L.Ed.2d 561. Also, the First Amendment requires special clarity so that protected expression will not be chilled or suppressed." [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998, (emphasis added)]

One offense is included in the other, as defined in subsection (2); or (b) Inconsistent findings of fact are required to establish the commission of the offenses; **or (c) The offense is designed to prohibit a continuing course of conduct and the defendant's conduct was uninterrupted by legal process,** unless the law expressly provides that specific periods of such conduct constitute separate offenses."[33] (emphasis added)

505.040 Effect of former prosecution for different offense[34]: "Although a prosecution is for a violation of a different statutory provision from a former prosecution..., **it is barred by the former prosecution under the following circumstances: (1) The former prosecution resulted in...a**

determination that there was insufficient evidence to warrant

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[33] See also: 801 SW(2d) 321 (Ky 1990), Ingram v Commonwealth: "The Kentucky Constitution is superordinate to legislative intent, and the view of double jeopardy in Ky Const § 13 is broader than the included offense approach of KRS 505.020; therefore, the Commonwealth is permitted to carve out of a single episode the most serious offense, but not to punish a single episode as multiple offenses, so that in a case where the defendant has committed a single act or impulse constituting one offense, and dual offenses are constitutionally impermissible." [Akers does hereby acknowledge that the Ingram case has been subsequently overruled by the Kentucky Supreme Court, on August 29, 1996, in Commonwealth v Burge, 947 SW(2d) 805 (Ky 1996). The Burge decision would, however, amount to an "*ex post facto*" ruling in view of its time-frame in relation to Akers' case and, as such, its application thereto would be violative of the Fourteenth Amendment to the United States Constitution, as well as Ky Const § 19] (emphasis added)

[34] See also: COMMENTARY, Kentucky Crime Commission/LRC, 1974: "Following an aquittal, a conviction, or a determination by the court that there was insufficient evidence to warrant a conviction, subsequent prosecution is barred by subsection [505.040](1)(b) if it is for an offense involving the same conduct as a former prosecution. For example: D is charged with committing breach of the peace by assaulting V, tried for this offense, and convicted. He is then tried for assault and battery of V. The former prosecution would serve to bar the subsequent prosecution under subsection (1)(b). Subsection (2) of this section parallels a provision in KRS 505.030 and provides for the doctrine of res judicata where the subsequent prosecution is for a different offense. The manner in which this provision is to operate is demonstrated well by an example used in the Proposed Delaware Criminal Code: As an example of how this would work, we may take the case of an injury caused by allegedly reckless driving by D. Suppose that D is first charged with reckless driving, and the case resulted that, under the circumstances, D was not reckless. If he is later charged with manslaughter, which requires proof of recklessness, he would be entitled to an acquittal. Proposed Delaware Criminal Code § 12, Commentary at 20 (1967)" (emphasis added)

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a conviction, and the subsequent prosecution is for: (a) An offense of which the defendant could have been convicted at the first prosecution; or (b) **An offense involving the same conduct** as the first prosecution requires proof of a fact not required in the other prosecution or unless the offense was not

consummated when the former prosecution began; **or (2) The former prosecution was terminated by a final order or judgement which has not subsequently been set aside and which required a determination inconsistent with any fact necessary to a conviction in the subsequent prosecution**; or (3) The former prosecution was improperly terminated, as that term is used in subsection (4) of KRS 505.030, and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated." (emphasis added)

505.030 (4) [see 505.040 (3]: "The former prosecution was improperly terminated **after the first witness was sworn**[35] but before findings were rendered by the trier of fact." (emphasis added)

508.010 Assault in the first degree: "(1) A person is guilty of assault in the first degree when: (a) He **intentionally causes serious physical injury to another person by means of a deadly weapon or dangerous instrument**[36]; **or** (b) Under...

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[35] See hereinafter paragragraphs E-34 & E-38.

[36] See also: 502 SW(2d) 60 (Ky 1973), Wills v. Commonwealth: "Notwithstanding claim that instruction of malicious striking and wounding with intent to kill should not have been given because it was not proven that defendant had used a deadly weapon, other than his fist which has been held not to be a deadly weapon, where defendant was not convicted upon charge of striking and wounding but upon lesser charge of assault and battery, instruction was not prejudicial to defendant" (emph. added); 321 SW(2d) 253 (Ky 1959), Charles v Commonwealth: "The fist has been held not to be a deadly weapon" (emphasis added); and 248 SW(2d) 911 (Ky 1952), Reed v Commonwealth: "Hands and feet are not deadly weapons. (Annotation from former KRS 435.170)" (emphasis added); and 695 SW(2d) 863 (Ky 1985), Roney v Commonwealth: "A human fist is not a 'dangerous instrument' within the meaning of first-degree assault statute, KRS 508.010; in light of the ambiguity of the legislature's intent, rule of lenity is followed and it was error to instruct the jury to convict an accused if it believed fists were dangerous instruments." (emphasis added) Akers does hereby acknowedge that the Roney case was subsequently overruled by the Kentucky Court of Appeals in Johnson v. Commonwealth, 926 SW(2d) 463 (Ky App 1996). However, as with the hereinabove Commonwealth v Burge, [see footnote 36, page 30 hereof], the Johnson decision would amount to an "*ex post facto*" ruling in view its timeframe in relation to Akers' case and, as such, its application thereto would

be in violation of U.S. Const. Amend. 14 [supra, page 10 hereof] and Ky Const § 19 [supra, page 26 hereof]

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circumstances manifesting extreme indifference to the value of **human life, he engages in conduct which creates a grave risk of death[37] to another and thereby causes serious physical injury** to another person. (2) Assault in the first degree is a Class B felony." (emphasis added)

508.030 Assault in the fourth degree: "(1) A person is guilty of assault in the fourth degree when: (a) He **intentionally or wantonly causes physical injury** to another person; **or (b) With recklessness he causes physical injury** to another person **by means of a deadly weapon or a dangerous instrument[36]**. (2) Assault in the fourth degree is **a Class A misdemeanor.**" (emph. added)

508.040 Assault under extreme emotional disturbance: "(1) In any prosecution under KRS 508.010, 508.020, or 508.030, in which intentionally causing physical injury or serious physical injury is an element of the offense, a defendant may establish in mitigation that he acted under the influence of extreme emotional disturbance, as defined in subsection (1)(a) of KRS 507.020. (2) An assault committed under influence of extreme emotional disturbance is: (a) A Class D felony when it would constitute an assault in the first degree or an assault in the second degree if not committed under the influence of extreme emotional disturbance; or (b) A Class B misdemeanor when it would constitute an assault in the fourth degree if not committed under the influence of extreme emotional disturbance;"

508.130 Definitions for KRS 508.130 to 508.150: "As used in KRS 508.130 to 508.150, unless the context requires otherwise: (1)(a) **To 'stalk' means to engage in an intentional course of conduct**: 1. Directed at a specific person or persons; 2. Which seriously alarms , annoys, intimidates, or harasses the person or persons; and 3. **Which serves no legitimate purpose.** (b) The course of conduct shall be that which would cause a

reasonable person to suffer substantial mental distress. (2) 'Course of conduct' means a pattern of conduct composed of two (2) or more acts, evidencing a continuity of purpose. **Constitu-tionally-protected activity is not included within the meaning of 'course of conduct'.** If the defendant claims that he was engaged in constitutionally-protected activity, **the court** shall determine the validity of that claim **as a matter of law** and...**shall exclude that activity from the evidence.**" (emphasis added)

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[37] **See also: 719 SW(2d) 730 (Ky 1986), Souder v. Commonwealth. "Where there is no evidence to prove that...victim is in danger of death..., the evidence is insufficient to sustain a conviction for first degree assault, which requires the infliction of 'serious physical injury'." (emphasis added)**

508.140 Stalking in the first degree: "(1) A person is guilty of stalking in the first degree, (a) When he **intentionally:** 1. Stalks another person; **and 2. Makes an explicit or implicit threat with intent to place that person in reasonable fear of:** a. Sexual contact as defined in KRS 510.010; **or b. Serious physical injury; or c. Death; and (b) 1. A protective order or other judicial order as provided in KRS Chapter 403 has been issued by the court to protect the same victim** or victims **and the defendant has been served[38] with the order or summons or has been given actual notice;** or 2. A criminal complaint is currently pending with a court, law enforcement agency, or prosecutor by the same victim or victims and the defendant has been served with a summons or warrant or has been given actual notice; or...4. The act or acts were committed while the defendant had a deadly weapon on or about his person. (2) **Stalking in the first degree is a Class D felony.**" (emphasis added)

508.150 Stalking in the second degree: "(1) A person is guilty of stalking in the second degree when he **intentionally:** (a) Stalks another person; **and (b) Makes an explicit or implicit threat with intent** to place that person in reasonable fear of: 1. Sexual contact as defined in KRS 510.010; 2. Physical injury; or

3. Death. (2) **Stalking in the second degree is a Class A misdemeanor.**" (emphasis added)

509.020 Unlawful imprisonment in the first degree: "(1) A person is guilty of unlawful imprisonment in the first degree when he **knowingly and unlawfully restrains another person under circumstances which expose that person to risk of serious physical injury.** (2) Unlawful imprisonment in the first degree is a Class D felony." (emphasis added)

509.040 Kidnapping: "(1) A person is guilty of kidnapping when he **unlawfully restrains another person** and when his intent is: (b) **To accomplish or to advance the commission of a felony;** (2) Kidnapping is a Class B felony when the victim is released in a safe place prior to trial, except as provided in this section." (emphasis added)

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[38] See also: U.S. v. Casciano, 927 F.Supp. 54 N.D.N.Y. 1996, i.e., "...12. Due process clause requires that notice be reasonably calculated, under all circumstances, to apprise interested parties of penalty an action and afford them an opportunity to present their objections. U.S.C.A. Const. Amend. 5." [i.e., "No person shall be held to answer for...infamous crime, unless on a presentment or indictment..., nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb"; ...nor be deprived of ...liberty, or property, without due process of law"; (emphasis added)

514.030 Theft by unlawful taking or disposition: "(1) Except as otherwise provided in KRS 217.181 or 218A.1418, a **person is guilty of theft by unlawful taking or disposition when he unlawfully: (a) Takes or exercises control over moveable property of another with intent to deprive him thereof;** (2) Theft by unlawful taking or disposition is a Class A misdemeanor unless the **value of the property is three hundred dollars or more,** or unless the property is a firearm (regardless of the value of the firearm), in which case it is a **Class D Felony.**" (emphasis added)

514.080 Theft by extortion: "(1) A person is guilty of theft by extortion when he intentionally obtains the property of

another **by threatening to:** (b) **Accuse anyone of a criminal offense;** or (c) **To expose a secret tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business repute; or** (d) **Use wrongfully his position as a public officer** or servant or employee by performing some act within or related to his official duty, **either express or implied, in a manner affecting some person adversely;** (3) Theft by extortion is a Class A misdemeanor unless the value of the **property obtained is three hundred dollars or more,** in which case it is a **Class D felony.**" (emphasis added)

514.110 Receiving stolen property: "(1) A person is guilty of receiving stolen property when he receives, retains, or disposes of moveable property of another knowing that it has been stolen, unless the property is received, retained, or disposed of with intent to restore it to the owner. (2) The possession by any person of any recently stolen property shall be ***prima facie*** evidence that such person knew that such property was stolen. (3) Receiving stolen property is a Class A misdemeanor unless the value of the property is three hundred dollars or more, or unless the property is a firearm (regardless of the value of the firearm), in which case it is a **Class D felony.**"

516.030 Forgery in the second degree: "(1) A person is guilty of forgery in the second degree when, **with intent to defraud, deceive,** or injure another, **he falsely** makes, **completes, or alters a written instrument** which is or purports to be or **which is calculated to become or to represent when completed:** (a) a deed, will, or codicil, **contract, assignment,** commercial instrument, credit or **other instrument which does or may evidence,** create, transfer, terminate **or otherwise affect a legal right,** interest, obligation, or status; **or (b) A public record or an instrument filed** or required or authorized by law to be filed in or **with a public office or public employee;** (2) Forgery in the second degree is a Class D felony." (emph. added)

523.020 Perjury in the first degree: "(1) A person is guilty of perjury in the first degree when he makes a material

false statement, which he does not believe, in any official proceeding under oath required or authorized by law; (3) Perjury in the first degree is a Class D felony."

523.050 Inconsistent statements: "(1) When a person has made inconsistent statements under oath, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single charge alleging in the alternative that one or the other was not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true."

524.100 Tampering with physical evidence: "(1) A person is guilty of tampering with physical evidence when, believing that an official proceeding is pending or may be instituted, he: (a) Destroys, mutilates, conceals, removes, or alters physical evidence which he believes is about to be produced or used in the official proceeding with intent to impair its verity or availability in the official proceeding; or (b) Fabricates any physical evidence with intent that it be introduced in the official proceeding or offers any physical evidence, knowing it to be fabricated or altered; (2) Tampering with physical evidence is a Class D felony."

KENTUCKY RULES OF EVIDENCE

K.R.E. 101. SCOPE: "These rules shall govern all proceedings in the courts of the Commonwealth of Kentucky, to the extent and with the exceptions stated in KRE 1101." (emphasis added)

K.R.E. 102. PURPOSE AND CONSTRUCTION: "These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense, and promotion of growth and development of the law of evidence **to the end that the truth may be ascertained and proceedings justly determined."** (emphasis added)

K.R.E. 103. RULINGS ON EVIDENCE: "**(a) Effect of Erroneous Ruling.** Error may not be predicated upon a ruling which admits or excludes evidence **unless the substantial right of the party is affected; and (1)** ***Objection.*** **In case the ruling**

is one admitting evidence, a timely objection or motion to strike appears of record, and upon request of the court stating the specific ground of objection, if the specific ground was not apparent from the context; or (2) *Offer of Proof.* In...

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case the ruling is one excluding evidence, upon request of the examining attorney, the witness may make a specific offer of his answer to the question. (c) **Hearing of Jury. In jury cases, proceedings shall be conducted,** to the extent practicable, **so as to prevent inadmissible evidence from being suggested to the jury by any means,** such as making statements or offers of proof or asking questions in the hearing of the jury." (emph. added)

K.R.E. 105. LIMITED ADMISSIBILITY: "(a) When evidence which is admissible as to one (1) party or for one (1) purpose but not admissible as to another pary or for another purpose is admitted, **the court,** upon request, **shall restrict the evidence to its proper scope and admonish the jury accordingly.**" (emphasis added)

K.R.E. 106. REMAINDER OF OR RELATED WRITINGS OR RECORDED STATEMENTS: "When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought to be considered contemporaneously with it."

K.R.E. 107. MISCELLANEOUS PROVISIONS: "(b) Effective date: The Kentucky Rules of Evidence shall take effect on the first day of July, 1992. **They shall apply to all** civil and **criminal actions and proceedings** originally brought on for trial after that date and to pretrial motions or matters originally presented to the court for decision upon or after that date if a determination of such motions or matters requires application of evidence principles; provided, however, that **no evidence shall be admitted against a criminal defendant in proof of a crime committed prior to July 1, 1992,** unless that evidence would have been admissible under evidence principle in existence prior to adoption of these rules."[39] (emphasis added)

K.R.E. 201. JUDICIAL NOTICE OF ADJUDICATIVE FACTS: "(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is...(2) Capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably be questioned. ...(d) When Mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information. (f) Time of taking notice. Judicial notice may be taken at any stage of the proceeding. (g) Instructing the Jury. The court shall instruct the jury to accept as conclusive any fact judicially noticed. (emphasis added)

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[39] A complete copy of these prior rules will be requested in discovery herein.

K.R.E. 401. DEFINITION OF "RELEVANT EVIDENCE": "Relevant evidence" means evidence having any tendancy to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." (emphasis added)

K.R.E. 402. "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States and the Commonwealth of Kentucky, by the acts of the General Assembly of the Commonwealth of Kentucky, by these rules, or by other rules adopted by the Supreme Court of Kentucky. (emphasis added)

K.R.E. 403. EXCLUSION OF RELEVANT EVIDENCE ON GROUNDS OF PREJUDICE, CONFUSION, OR WASTE OF TIME: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of undue prejudice, confusion of the issues, or misleading the jury..." (emphasis added)

K.R.E. 404. CHARACTER EVIDENCE AND EVIDENCE OF OTHER CRIMES: "(a) Character Evidence Generally: Evidence of a persons character is not admissible for

the purpose of proving action in conformity therewith on a particular occasion, except: (1) *Character of accused*: Evidence of a pertinent trait of character or of the general moral character **offered by the accused...**; (2) *Character of Victim Generally*: Evidence of a pertinent trait of character of the victim of the crime **offered by the accused...**; **(b) Other Crimes, Wrongs, or Acts.** Evidence of other crimes, wrongs, or acts **is not admissible** to prove the character of a person in order to show action in conformity therewith. ...**(c) Notice Requirement.** In a criminal case, if the prosecution intends to introduce evidence pursuant to subdivision (b) of this rule as a part of its case in chief, it **shall give reasonable pretrial notice to the defendant** of its **intention** to offer such evidence. **Upon failure of the prosecution to give such notice the court may** exclude the evidence offered under subdivision (b) or for cause shown may excuse the failure to give such notice and **grant the defendant a continuance or such other remedy as necessary to avoid unfair prejudice caused by such failure.**" (emphasis added)

K.R.E. 405. METHODS OF PROVING CHARACTER: "**(a) Reputation or opinion.** In all cases in which evidence or a trait of character of a person is admissible, proof **may be made** by testimony as to general reputation in the community or by testimony **in the form of opinion. (c) Specific Instances of Conduct.** In cases in which character of a person is an essential element of a charge, claim, or defense, **proof may also be made of specific incidents in that person's conduct.**" (emphasis added)

K.R.E. 504. HUSBAND-WIFE PRIVILEGE: "**(a) Spousal Testimony.** ...A person has a **privilege** to prevent his or her spouse from testifying against the party as to events occurring after their marriage. **(b) Marital Communications.** An individual has a right to refuse to testify and **to prevent another from testifying to any confidential communication** made by the individual to his or her spouse **during their marriage.** ...A communication is confidential if it is made **privately** by an

individual to his or her spouse and is not intended for disclosure to any other person." (emphasis added)

K.R.E. 602. LACK OF PERSONAL KNOWLEDGE. "A witness may not testify to a matter unless evidence is introduced to support a finding that the witness has **personal knowledge** of the matter." (emphasis added)

K.R.E. 1101. APPLICABILITY OF RULES. "**(a) Courts.** These rules apply to **all the courts of this Commonwealth in the actions, cases, and proceedings** and to the extent hereinafter set forth. ...**(c) Rules on Privileges.** The rules with respect to **privileges apply at all stages of all actions, cases, and proceedings.**" (emphasis added)

D. CITES TO THE RECORD

1. The civil action in support of which this "MEMORANDUM & MEMORANDUM OF LAW" is being filed revolves around the lengthy (twenty-six year) marriage, and eventual divorce, of Plaintiff James G. Akers and Defendant Carolyn P. Bishop. It does further encompass, beginning in May of 1994 and continuing through July 7, 2000, **in excess of forty-one (41) compelled court appearances** by Akers in the Domestic Relations/Domestic Violence Divisions of Fayette [Kentucky] District, Fayette [Kentucky] Circuit Court, and Nashville/ Davidson County [Tennessee] General Sessions & Circuit Courts, and includes **two (2) separate Pre-trial Conferences**; at least **five (5) separate Arraignments** in...

Fayette District Court; **two (2) Extradition Hearings** in the Nashville/Davidson County [Tennessee] General Sessions Court; **two (2) separate three-day Trials** in Fayette [Kentucky] Circuit Court; as well as **three (3) distinctly separate actions** in the Kentucky Court of Appeals by Akers, **two (2) of which resulted in "reversal"**. Consequently, the "state court record" necessarily referred to herein, in relevant part, is contained within **literally volumes** of documentation, audio/video recordings, and transcripts which, in their entirety, would be

impractical, **if not virtually impossible**, to incorporate herewith in any form other than "by reference only". Therefore, all the hereinafter references to the "state court record" shall refer only to the "sworn witness" (or other such principal) quoted herein; tape number ("TT" for Trial Tape, "CP" for Certified Portions of Hearings, etc.); the date of recording of that tape; and the approximate time of the testimony and/or proceeding (see "APPENDIX" bound herewith for enumerations noted "Incorporated by reference only"). All additional hereinafter references and/or citations, including quoted excerpts of transcripts/audio recordings of proceedings within the Domestic Relations/Domestic Violence Divisions of Fayette [Kentucky] District Court, the Fayette [Kentucky] Grand Jury, and documentation in support of the herewith contemporaneously-filed civil action, are as referred to within the text hereof in alpha-numeric order, and appended hereto in the form of "EXHIBITS" [see "APPENDIX"].

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E. STATEMENT OF THE CASE

INTRODUCTION

1. As hereinbefore stated, the criminal prosecutions which give rise to the accompanying civil action filed concurrently herewith revolve around the lengthy (twenty-six year) marriage, and eventual divorce, of Plaintiff James G. Akers (hereinafter "Akers") and Carolyn P. Bishop (hereinafter "Bishop"), and allegations that Akers intentionally caused "serious physical injury" to Bishop on, or about May 4, 1994, with his hands, and then "stalked" her from November of 1994 until May of 1995. [see Indictment No. 95-CR-984, Exhibit "A"]

2. Notwithstanding Bishop's **obvious** violations of, ***inter alia***, **Title 18 U.S.C. §§ 873, 875, 876, 1341, 1503, 1512(b)(2) (B) & Title 42 U.S.C. §§ 1983 & 1985** of the **United States Codes; and K.R.S. 514.030, 514.080, 523.020, 523.050, & 524.100** of the **Kentucky Revised Statutes**; together with Bishop's exploitation and/or abuse of the criminal justice system of the

Commonwealth of Kentucky in the implementation and concealment thereof; the facts with respect to those events preceding, contemporaneous with, and subsequent to, events of May 4, 1994, are as set forth in the Affidavits of the Plaintiff James G. Akers, Deborah L. Harvil, Woodsie E. Akers, Alan P. Akers, A. Wayne Akers, Stacy B. Akers, Beaulahvene Brown, Darryl Brown, Charlotte S. Kirby, and Dennis R. Akers, all of which such Affidavits are appended hereto as Exhibits "B" through "K", respectively. The facts...

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contained therein are wholly-supported by the "state court record" in Akers' case(s) more particularly depicted as [Fayette District Court] "94-D-00396-001" together with [Fayette Circuit Court] "Indictment Number 95-CR-984", and are supplemented and/summarized as hereinafter follows:

BACKGROUND FACTS

3. Akers and Bishop first met on May 23, 1967, near Jenny Wiley State Park near Prestonsburg, Floyd County, Kentucky.

4. Having dated on a regular basis over the succeeding seventeen months; on October 19, 1968, Akers and Bishop entered into a **public contract** of marriage at Prater Memorial Methodist Church in Salyersville, Kentucky, **specifically conditioned** upon mutual covenants and promises, ***inter alia***, to: "forsaking all others, to love and honor"; "to have and to hold"; "in sickness and in health"; "in poverty and in wealth"; "'til death do [they] part". **Additionally**, Akers and Bishop agreed that, as a "blueprint" for their marriage, [they] would respect all of those principles set forth in I Corinthians-Chapter 7 [King James Version], i.e., ***inter alia***, as follows:

> "2. Nevertheless, because of sexual immorality, let each man have his own wife, and let each wife have her own husband.
>
> 3. Let the husband render unto his wife the

affection due her, and likewise also the wife to her husband.

5. Do not deprive one another except with consent for a time, that you may give yourselves to fasting and...

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prayer; and come together again so that Satan does not tempt you because of your lack of self-control.

10. Now to the married I command, yet not I but the Lord: A wife is not to depart from her husband.

11. But and if she depart, let her remain unmarried or be reconciled with her husband. And a husband is not to divorce his wife.

37. A wife is bound by the law as long as her husband lives; but if her husband dies, she is at liberty to be married to whom she wishes, only in the lord."[40]

5. Akers and Bishop are the natural parents of two sons: Anthony Wayne Akers (hereinafter "Wayne"), born August 5, 1969; and Alan Patrick Akers (hereinafter "Alan"), born June 18, 1974.

6. Akers and Bishop are the natural grandparents of three grandchildren: Megan A. Akers (hereinafter "Megan"), born April 9, 1989; Shanan N. Akers (hereinafter "Shanan"), born July 31, 1990; & A. Shane Akers (hereinafter "Shane"), born May 1, 1992.

7. During their marriage, Akers and Bishop consecutively maintained residences in: Prestonsburg, Kentucky; Lexington, Kentucky; Nashville, Tennessee; Knoxville, Tennessee; and Brownsburg, Indiana.

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[40] Admittedly, "marriage contracts" do not appear to be enforceable under Kentucky law, notwithstanding provisions of **ARTICLE I-SECTION 10 [1.]**, U.S. Constitution [supra, page 6 hereof, i.e., **"No state shall...pass any bill of attainer, *ex post facto* law or law impairing the obligation of contracts"** (emphasis added)] and **Ky Const § 19 (1)** [supra, page 26 hereof, i.e., "No ex

post facto law, ...shall be enacted" (emphasis added)]. Nonetheless, these facts, when coupled with those facts in hereinafter paragraphs E-5 thru E-9, E-19 thru E-21, E-28, E-29(d) & (e), E-31 thru E-34, E-38, E-45 thru E-47, E-50, E-56, E-62, & E-64, *inter alia*, cannot be ignored as the single most compelling motivation for Akers' conduct which eventually resulted in charges of "stalking".

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8. In September of 1978, Akers began to alert Bishop that she was developing a "hump" in the cervical area of her neck and to caution her about her "poor posture" as the suspected cause.

9. At some time during the month of July, 1989, Bishop vowed to members of Akers' family that: "If Gorden ever goes out on **me, I will fix him!**"

10. (a) Being completely unaware of Bishop's threat in hereinabove paragraph E-9, on May 31, 1991, Akers apologetically informed Bishop of an event during the time he was working in Dallas, Texas, in November of 1981, during which he became intimate with another woman but refrained from engaging in sexual intercourse with that woman but; (b) Bishop became furious with Akers and; (c) yelled: **Gorden!, why were you in that situation in the first place!"**

11. In June of 1984, Bishop began complaining to Akers and numerous family members that she was experiencing severe pain in her neck and back and that her work at a bank seemed "to make it worse". [see Exhibits "B" through "K" hereto]

12. (a) On July 14, 1993, the Commonwealth of Kentucky State Legislature enacted its new "Domestic Violence and Abuse" laws (K.R.S. 403.710, et seq.) which significantly enhanced all corresponding laws which had been in effect since July 13, 1984; and (b), shortly thereafter, Lexington-Fayette [Kentucky] Urban County Government/Mayor, Pamela Miller (hereinafter "Miller"), then Deputy Sheriff, Katherine Witt (hereinafter "Witt"), and...

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various individuals known only as a group of individual persons and/or public officials within the Lexington-Fayette

[Kentucky] Urban County Government (hereinafter "LFG Does 1 through 50") conspired to secure their individual and collective political positions and goals by devising, implementing, and enforcing policies for the express purpose of empowering their primary political base (i.e., the women of Fayette County, Kentucky) to unconstitutionally and/or unlawfully seize and withhold the property of their "significant others", with intent to deprive them thereof and, in effect, directing that: "[i]n all cases of alleged 'domestic violence', whether legitimate or otherwise, the 'man' goes to jail."[41]

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[41] See United States Constitution [supra, page 5 hereof, et seq.], i.e., **FOURTH AMENDMENT**: "The right of the people to be secure in their **persons, houses, papers, and effects**, against unreasonable searches and **seizures**, shall not be violated, and **no Warrants shall issue, but upon probable cause**" (emphasis added); **FIFTH AMENDMENT**: "No person shall **be held to answer for... infamous crime, unless on a presentment or indictment** of a Grand Jury, ...**nor be deprived of...liberty, or property, without due process of law**" (emphasis added); **FOURTEENTH AMENDMENT**: "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside. No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws**" (emphasis added); and United States Codes Annotated [supra, page 11 hereof, et seq.], i.e., **TITLE 18 U.S.C. § 2. Principals**: "(a) Whoever **commits** an offense against the United States or **aids, abets, counsels**, commands, **induces, or procures** its commission, **is punishable as a principal.** (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." (emphasis added); **TITLE 18 U.S.C. § 3. Accessory after the fact**: "Whoever, knowing that an offense against the United States has been committed, **receives, relieves**, comforts **or assists** the offender in order to hinder or prevent his apprehension, trial or punishment, **is an accessory...**" (continued, page 48 hereof)

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13. On August 25, 1994, Akers received a sizeable cash settlement pursuant to a previous business venture involving his then operating corporation, Coleman/Akers & Akers, Incorporated, but was at the time, **and yet remains**, prohibited

from disclosing the terms and conditions thereof pursuant to a "Non-disclosure Agreement" executed concurrently with the "settlement agreement" and forming an integral part thereof.

14. During Thanksgiving weekend of 1993, Bishop expressed to several members of Akers' family that she was (a) "unhappy" in her marriage to Akers and "just waiting for the right chance to get out of it"; (b) that she had not "seen any of [that money in hereinabove paragraph E-13] yet"; (c) that she had "been offered a job in Cincinnati and [would] probably take it"; and (d) that some of her "friends at Central Bank and [certain...

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[41] United States Codes Annnotated (continued from page 47 hereof): "... **after the fact**." (emphasis added); **TITLE 18 U.S.C. § 5. United States defined**: "The term 'United States', as used in this title in a territorial sense, includes **all places** and waters, continental or insular, **subject to the jurisdiction of the United States**, except the Canal Zone." (emphasis added); **TITLE 18 U.S.C. § 1503. Influencing or injuring officer or juror generally**: "(a) Whoever **corruptly...endeavors to influence or impede any grand or petit juror**, or officer in or of any court of the United States, ...**or endeavors to influence, obstruct, or impede, the due administration of justice**, shall be punished as provided in subsection (b)." (emphasis added); **TITLE 18 U.S.C. § 1512. Tampering with a witness, victim, or an informant**: "(b) Whoever knowingly uses **intimidation ...or corruptly persuades** another person, **or attempts to do so**, or engages in misleading conduct toward another person, **with intent** to – (1) **influence**, delay, **or prevent...testimony of any person** in an official proceeding; (2) **cause or induce any person to** – (A) withhold testimony, or withhold a record, document, or other object from an official proceeding; (B) **alter**, destroy, **mutilate**, or conceal **an object with intent to impair the object's integrity** or availability in an official proceeding; shall be fined under this title or imprisoned not more than ten years, or both." (emphasis added); (continued, page 49 hereof)

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members of her] family" had been advising her to "leave [Akers] and then divorce him and take everything [Akers] has."[42]

15. During the week before Christmas, 1993, (a) Bishop had an allergic reaction to Amoxycillin; (b) was taken to an Emergency Room of a Lexington area hospital on two occasions by Akers; (c) fainted in the couple's bathroom due to extreme

constipation; (d) was revived by Akers; and (e) reacted by stating to Akers: "Thank you for saving my life!".

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[41] United States Codes Annnotated (continued from page 48 hereof): **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights**: "**Every person** who, **under color of any statute, ordinance, custom,** or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof to **the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress;" (emphasis added)'; and **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights**: "(2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen equal proection of the laws,** or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, **or class of persons**, to the equal protection of the laws; (3) ...**in any case of conpiracy** set forth in this section, if **one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators;" (emphasis added)

[42] Akers was not aware of **any of these facts** until June of 1997, when informed thereof by members of Akers' family and **while Akers was imprisoned at Eastern Kentucky Correctional Complex**, in West Liberty, Kentucky (within the Kentucky Department of Corrections) pursuant to his **first convictions** as outlined in hereinafter paragraphs E-31 through E-38, E-40 through E-42, E-48, E-56, E-58, E-60 through E-68, & E-70 through E-86.

CONSPIRACIES ARE BORN

16. In early January of 1994, Bishop informed Akers that her friend, Doris Fleming (hereinafter "Fleming"), as well as numerous other co-workers at Central Bank & Trust Company, Incorporated (hereinafter "CBT"), had been advising her to

"divorce [Akers] and take everything he has".

17. During the succeeding three months, of January to April of 1994, Bishop became virtually impossible to placate any manner and the Akers' homelife became all but unbearable.

18. In early March of 1994, Bishop assaulted the Akers' granddaughter, Shannan, for only refusing to drink the beverage Bishop had given her to drink with her meal. Although Akers was extremely distraught by Bishop's behavior, his only reaction was to tell Bishop that he "strongly disapprove[d] of what [she had] just done".

19. It being obvious to Akers that his family needed "new direction", Akers was baptized in, and transferred his church membership to Southland Christian Church of Lexington, Inc. (hereinafter "SCC") on March 27, 1994. It was at that event that Akers first had any substantive contact with Todd Layne (hereinafter "Layne"), a Pastoral Counselor at SCC.

20. On the following Sunday of April 3, 1994, Bishop transferred her church membership to SCC, as well.

21. During the succeeding month or so, upon insistence of Bishop, the Akers' sought the counsel of Robert Pitman, a...

Pastoral Counselor in the Lexington, Kentucky, area, in effort to resolve and/or reconcile all of their marital difficulties. When Pitman encouraged Bishop to recognize and correct her "own faults", however, Bishop terminated Pitman's counsel and sought the counsel of Layne.

22. Akers has never wanted, sought, nor consented to accept the counsel of Layne who, at the time, was only twenty-four years of age; had been married less than two years; and had only one child yet in early infancy.

23. On April 7, 1994, Bishop returned to the Akers' home, from shopping, and attempted to provoke Akers into an argument over something to do with "H & R Block" and "income taxes". When Akers refused to engage in an argument with Bishop, she angrily left home with the Akers' son, Alan, and refused to return for the succeeding ten days.

24. At various times beginning on, or about, April 8, 1994, the herein Defendants Fleming, Layne, and yet unidentified co-conspirators at CBT (hereinafter "CBT Does 1 through 40") and SCC (hereinafter "SCC Does 1 through 50") continued to encourage Bishop to "divorce [Akers] and take everything he has"[43], those said Defendants and co-conspirators being aware of those facts in hereinabove paragraphs E-12 through E-14.

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[43] See, e.g.: **Title 18 U.S.C. § 2** [supra, page 11 hereof], i.e, "(a) Whoever **commits** an offense against the United States or **aids, abets, counsels,** commands, **induces, or procures** its commission, **is punishable as a principal**. (b) Whoever **willfully causes an act to be**..." (continued, page 52 hereof)

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25. Bishop, under the advice of Fleming and Layne, attended a Bible Study Class at SCC on April 13, 1994, during that time Bishop was separated from Akers as set forth in the hereinabove paragraphs E-4, E-14, E-16, & E-26.

26. (a) Bishop, having already removed her wedding band (see hereinabove paragraphs E-4, E-11, & E-21), initiated and/or acquiesced to an introduction to a man yet unknown to Akers, one Donald Shannon (hereinafter "Shannon") who, at the time: was (b) in the process of divorcing his wife of over twenty-five years; was (c) a deacon at SCC; and was (d) a Commercial Loan Officer at Bank One, Lexington, NA, where he had access to the financial records of Akers and hereinabove C/AA.

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[43] **Title 18 U.S.C. § 2** (continued from page 51 hereof): "... **done** which if directly performed by him or another would be an offense against the United States, is punishable as a principal." (emphasis added); **Title 42 U.S.C. § 1983** [supra, page 16 hereof], i.e., "**Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or**

immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." (emphasis added); **K.R.S. 514.030** [supra, page 34 hereof], i.e., "(1) Except as otherwise provided in KRS 217.181 or 218A.1418, **a person is guilty of theft by unlawful taking or disposition when he unlawfully: (a) Takes or exercises control over moveable property of another with intent to deprive him thereof**; (2) Theft by unlawful taking or disposition is a Class A misdemeanor unless the **value of the property is three hundred dollars or more**, or unless the property is a firearm (regardless of the value of the firearm), in which case it is a **Class D Felony**." (emph. added); **K.R.S. 514.080 Theft by extortion**: "(1) A person is guilty of theft by extortion when he intentionally obtains the property of another **by threatening to**: (b) **Accuse anyone of a criminal offense**; or (c) **To expose a secret tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business repute**...; (3) Theft by extortion is a Class A misdemeanor unless the value of the **property obtained is three hundred dollars or more**, in which case it is a **Class D felony**." (emphasis added).

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27. The following day, April 14, 1994, Shannon contacted Bishop at her office at CBT and a "rendezvous" was arranged for later that same day.

28. **Yet being <u>totally unaware</u> of those facts in herein above paragraphs E-9, E-11, E-12, E-14, E-24, and E-25 through E-27**; (a) Akers waited at the residence of the Akers' son, Wayne, until around 10:30 p.m. on April 14, 1994 in an effort to encourage Bishop to return to their home. (b) It being Akers' objective to restore harmony to his marriage and family, he then inquired of Bishop as to "the three worst things [Akers had ever done to Bishop] and, if [they could] deal with those, then surely [they could] deal with all the others". (c) Bishop's only response to Akers' inquiry was in reference to an occasion in August, 1967, when Akers allegedly "undressed [Bishop] and made [her] stand before [Akers] at [Akers'] parents' house". (d) Being **<u>flabbergasted</u>** by Bishop's response, and upon her adamant refusal to return home, Akers purchased a rose for Bishop, presented it to her, and told her: "I just want you to get better"; and (e) Akers promptly returned to the couple's marital home in total despair.

29. (a) Over the succeeding four days of April 15 through April 18, 1994, Bishop refused to return to the Akers' marital home until she was "reasonably sure" that Akers was unaware of those facts as outlined in hereinabove paragraphs E-24 through E-27, and without concurrence thereof by Layne and Robert Pitman. (b) On the evening of April 18, 1994, Akers and Bishop...

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met with Pitman; (c) Bishop received the assurances she was seeking; (d) returned home with Akers and was; (e) treated "like a queen" over the succeeding three weeks by Akers.

30. On May 1, 1994, Bishop again assaulted one of Akers' grandchildren (hereinabove "Shane"), while shopping with him for his **second birthday**. Akers, being already extremely troubled by that event in hereinabove paragraph E-18, advised Bishop that no further such mistreatment of the Akers' grandchildren would, **or could**, be tolerated.

31. On May 4, 1994, Akers and Bishop attended a Bible Study Class at SCC during which; (a) Akers noticed Bishop and a man unknown to Akers (later learned to be Shannon) behaving in an "interesting" manner toward each other. (b) At the end of the class, Akers noticed this same man "glaring" at Bishop's "mid-section" in a manner which; (c) was, at the very least, "inappropriate" in a church atmosphere. (d) En route back to the Akers' marital home, Akers inquired of Bishop as to the identity of the unknown man and how she knew him. (e) Bishop responded to Akers' inquiries to the effect that: "I don't know, I've never seen him before". (f) Then puzzled by Bishop's responses, Akers questioned Bishop further upon their arrival at home. (g) After admitting that she had initially lied to Akers because of the way he "would react", Bishop disclosed that she had "met [Shannon] at Bible Study a few weeks ago shared [her] bible with him". (h) Akers, being upset that Bishop had lied to him as she had done so many times before, and being concerned

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about the affect Bishop's behavior at the Bible Study Classes might have on the Akers' standing in the church, called a "time out" and took the Akers' dog for a walk. (i) Upon returning a few minutes later, Akers noticed that Bishop had already gone to the couple's bedroom to prepare for bed. (j) Akers then sat down at the couple's kitchen table just to "think things over". (k) At about 10:30 p.m., Bishop "stormed" into the kitchen and screamed: "I'm going to ask you just on time to come on to bed with me!" (l) Akers reacted: "No, I want to sit here and think for a while. I'll be up a little later". (m) Bishop then went to bed. (n) At approximately 11:30 p.m., Akers went to the couple's bedroom to prepare for bed, as well. (o) Upon entering the couple's bedroom, Akers noticed Bishop lying, as closely as possible, to "her side" of the bed. (p) Akers then thought to himself: "Well, I've certainly seen this before. I'll 'sleep on it' and approach her again in the morning." (q) Akers then quietly prepared for bed, laid down, and went to sleep. (r) At approximately 2:15 a.m. on May 5, 1994, Akers awakened; (s) gently nudged Bishop, and; (t) said to Bishop: "Carolyn, I'd really like to know the truth." (u) Bishop then turned toward Akers and screamed: "**Gorden, I already told you the truth! You are <u>not going to cross-examine</u> me! ...etc., etc.!**". (v) Akers then got out of bed, went to the couple's bathroom to wash his face with cold water, and then returned to the couple's bed; (w) intending only to remove Bishop from the bedroom until she "cooled down". (x) Before Akers reached the bed, however, ...

Bishop sprang to her feet and began to "flog" Akers' face and chest with her fists. (y) Using only his torso and open arms (to guide only), Akers forced Bishop out of the bedroom, and (z) just outside the bedroom door, Bishop "plopped down" in the hallway floor, brushing Akers at his knees with her buttocks; (aa) causing Akers to lose his balance and; (bb) Akers' left hip made an indention (**7-inch diameter by 1/2-inch deep, <u>max.</u>**) in the hallway drywall partition. (cc) Akers then kicked Bishop on her left buttocks with the inside (arch) portion of his bare left

foot; (dd) Bishop then struck Akers in his groin with her right fist. (ee) **As purely a reaction, and instantly reflecting upon those events in hereinabove paragraphs E-18 & E-30**, Akers then slapped Bishop on her left lip, **in a restrained mannner**, with his open right hand. (ff) Akers then stepped back into the couple's bedroom, slammed the door, and locked it. (gg) The Akers' son, Alan, emerged from his bedroom and asked: "What's going on out here?" (hh) Akers then stepped out of his bedroom and said: "I'm going for a drive. I'll be back in about an hour." (ii) Akers then went for a drive but returned about twenty minutes later, and; (jj) Upon entering the Akers' front door, Akers noticed Bishop standing at the Cloak Closet, ready to leave home. (kk) Akers asked Bishop: "Can't we, at least, sit down and talk about this?"; (ll) Bishop retorted: "**I don't think so!**" (mm) Akers then went to the kitchen table to try and figure out: "What on earth happened here?". (nn) Bishop then entered the kitchen (apparently to get something) and Akers said...

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to her: "You know, my Dad told me a long time ago you weren't shooting straight with me. Now I think I know what he meant." (oo) Bishop responded angrily: "**Well, at least I didn't do what you did in Dallas!**" (referring to a pseudo-adulterous event, in November of 1981, which Akers had informed Bishop of on May 31, 1991). (pp) The hereinabove is the **total extent** of the alleged "assault" of Bishop on May 4 (and/or 5), 1994. (qq) Bishop and the Akers' son, Alan, then left the Akers' home, Bishop slammed the door behind her, and drove to Akers' mother's home (approximately four miles away) where they spent the balance of the night. (rr) Bishop slept in the same bed with Akers' elderly mother, Woodsie Akers (hereinafter "Woodsie) for the balance of the night and; (ss) resumed normal work activities at CBT less than six hours after the hereinabove altercation. (tt) **Other than a slightly-swollen lip, Alan and Woodsie saw no signs of injury to Bishop**; (uu) **Bishop did not complain of, or otherwise mention, any injuries**; and (vv) behaved essentially "normally" other than being "emotionally" upset. [see TT#2, A.

P. Akers, 05/21/96, 11:32:30 et seq.; TT#2, W. E. Akers, 05/21/96, 14:27:40; and TT#3, A. P. Akers, W. E. Akers, 10/28/98, 09:23:00, et seq., & TT #3, 10/27/98, 17:49:45, et seq.]

32. In response to Akers' attempts at a reconciliation over the succeeding five days, Bishop sought, and obtained, an "Emergency Protection Order" against Akers on May 10, 1994 [see Exhibit "L" hereto]. As the basis therefor, Bishop tendered her Affidavit which stated as follows: **"[t]oday, May 10, 1994, he**

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is intoxicated and calling me at work continuously. I am afraid I will lose my job if he doesn't stop. On May 4, he hit me and kicked me and I left home". [Exhibit "M" hereto (emph. added)]

33. In early evening, on May 11, 1994, Akers was "served" with the hereinabove "Order and Summons" and, on May 12, 1994, Akers was arrested for purportedly violating that order by contacting Bishop **by telephone** after being served.

34. On May 13, 1994, Akers was arraigned before Fayette District Judge Thomas Clark (hereinafter "Clark") on the charges of "Domestic Violence" and "Contempt of Court" [see Transcript, Exhibit "N" hereto]. Hereunto relevant portions of the audio transcript of that arraignment include, but are not limited to, the following:

Judge Clark: Mrs. Akers, ...Would you raise your right hand, please? Do you swear that the testimony you're about to give to be the truth, the whole truth, and nothing but the t th? [Page 1, lines 6 through 14]

[Bishop]: I do. [page 1, line 16]

Judge Clark: What I propose to do at this point is since the domestic violence hearing is going to go ahead and be heard on May the 24th, is

go ahead and continue this contempt until May the 24th as well. [page 7, lines 15 thru 23]

Mr. Akers: I can assure The Court, I will not contact her again. I mean – it's very clear to me now, I can assure you, it was not clear to me before but it's very, very clear to me now. [page 8, lines 14 through 17][44]

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[44] "[In indirect civil contempt proceedings, the] **contemnor** holds the keys to the jail in his pocket and **is entitled to immediate release upon his willingness to abide by the court's orders**." (continued, page 59 hereof)

Judge Clark: I'll advance the domestic violence,[45] ... continue the contempt[46] to May the 19that 9:30 in this court room. [page 10, lines 1 through 7]

Judge Clark: Mr. Akers, I considered your counsel's comments in regards to your release from custody. ...I'm going to leave your bond as presently set and you'll remain in custody unless bond is posted. [page 10, lines 14 through 23; page 11, line 1]

Todd Layne: I am one of the ministers at Southland Christian Church and we have worked with both these people. One of the things we've tried to get them to do is make some tough decisions about their relationship, and especially Gordon [Akers] about the treatment center, and Gordon has been unwilling to do that up

to now, so if you could put some - something behind it to make sure he goes because he has chose a treatment center before but has not chosen to stay. ...**that would be our recommendation that you put something behind it to make sure he's there.**[47] [page 12, lines 12 thru 23; page 13, lines 1 thru 21] (emphasis added)

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[44] (continued from page 58 hereof): See also: **K.R.S. 403.760** [supra, page 28 hereof], i.e., "(1) **Violation of the terms or conditions of an order, under the provisions of KRS 403.740 or...**" **403.750**, whether an emergency protective order, or an order following hearing, after service of the order on the respondent, or notice to the respondent, **shall constitute contempt of court**; (5) **Civil proceedings and criminal proceedings are mutually-exclusive. Once either has been initiated, the other may not be undertaken regardless of the outcome of the original proceeding.**" (emphasis added); **K.R.S. 403.780** [supra, page 28 hereof], i.e., "**Testimony offered by an adverse party** in a hearing held pursuant to the provisions of 403.745 **shall not be admissible in any criminal proceeding involving the same parties.**" (emphasis added); and hereinafter paragraphs E-86.V(b) & E-110.V(a)

[45] See also: Hereinafter paragraph E-38 and corresponding footnote [51].

[46] See also: Hereinafter paragraph E-38 and corresponding footnote [52].

[47] Layne was **not under oath**. See: **United States Constitution**, e.g., **ARTICLE IV-SECTION 2** [supra, page 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emphasis added); **FOURTH AMENDMENT** [id., page 7 hereof], i.e., "The right of the people to be secure..." (continued, page 60 hereof)

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[47] **FOURTH AMENDMENT** (continued from page 59 hereof): "...in their **persons**, houses, papers, and effects, against unreasonable searches and **seizures**, shall not be violated." (emphasis added); **FIFTH AMENDMENT** [id., pages 7 & 8 hereof], i.e., "No person shall **be held** to answer for...infamous crime, **unless on a presentment or indictment** of a Grand Jury, ...**nor be deprived of** ...**liberty**, or property, **without due process of law.**" (emphasis

added); **FOURTEENTH AMENDMENT** [id., pages 10 & 11 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside. No State** shall make or **enforce** any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws**" (emph. added). **See Also**: **TITLE 18 U.S.C. § 2** [id. page 11 hereof], i.e., "(a) Whoever **commits** an offense against the United States or **aids, abets, counsels**, commands, **induces, or procures** its commission, **is punishable as a principal.** (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." (emphasis added); **TITLE 18 U.S.C. § 5** [id., pages 11 & 12 hereof], i.e., "**United States defined:** The term "United States", as used in this title in a territorial sense, includes **all places** and waters, continental or insular, **subject to the jurisdiction of the United States**, except the Canal Zone." (emphasis added); **TITLE 18 U.S.C. § 1201. Kidnapping** [id., page 12 hereof], i.e., "(a) Whoever, unlawfully **seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds** for ransom or reward **or otherwise** any person, except in the case of a minor by the parent thereof, when – (1) the person is **willfully transported in interstate commerce**; (2) any such act against the person is done within the special maritime jurisdiction of the United States; (b) With respect to subsection (a)(1) above, the failure to release the victim within twenty-four hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce. (c) **If two or more persons conspire to violate this section** and one or more of such persons do any covert act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life." (emph. added); **TITLE 18 U.S.C. § 1503. Influencing or injuring officer or juror generally** [id., page 13 hereof], i.e., "(a) Whoever **corruptly...endeavors to influence or impede**...officer in or of any court of the United States, ...**or endeavors to influence, obstruct, or impede, the due administration of justice**, shall be punished as provided in subsection (b)." (emphasis added); **TITLE 18 U.S.C. § 1512. Tampering with a witness, victim, or an informant** [id., page 14 hereof], i.e., "(b) Whoever...**corruptly persuades** another person, **or attempts to do so, or engages in misleading conduct toward another person, with intent** to – (1) **influence**, delay, **or prevent the testimony of any person** in an official proceeding; (2) **cause or induce any person to** – (A) withhold testimony...from an official proceeding; shall be fined under this title or imprisoned not more than ten years, or both." (emph. added); **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights** [id., page 16 hereof], i.e., "**Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or District of Columbia, **subjects, or causes to**..." (continued, page 61 hereof)

[47] **TITLE 42 U.S.C. § 1983** (continued from page 60 hereof): "... **be subjected**, any citizen of the United States or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" (emph. added); **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights** [id., pages 16 & 17 hereof], i.e., "(2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws**, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators" (emphasis added); **Constitution of Kentucky**: **Ky Const § 1. Rights of life, liberty, worship, pursuit of safety and happiness, free speech, acquiring and protecting property, ...redress of grievances, bearing arms**: [supra, page 26 hereof], i.e., "**All men** are, by nature, free and equal, and **have certain inherent and inalienable rights**, among which may be reckoned: **First**: The right of enjoying and **defending their** lives and **liberties**; **Second**: The right of worshipping Almighty God **according to the dictates of their consciences**; **Third**: The right of seeking and pursuing their safety and happiness; **Fourth**: The right of **freely communicating their thoughts and opinions**; **Fifth**: The right of acquiring and **protecting property**; ..." (emphasis added); **Ky Const § 2. Absolute and arbitrary power denied**: [id., page 26 hereof], i.e., "**Absolute and arbitrary power over the lives, liberty and property of freemen exists nowehere in a republic, not even in the largest majority**." (emphasis added); **Ky Const § 3. Men are equal...** [id., page 26 hereof], i.e., "All men, ...are equal; and **no grant of exclusive...privileges shall be made to any man or set of men**..." (emphasis added); **Ky Const § 5. Right to religious freedom**: [id., page 26 hereof], i.e., "**No preference shall ever be given by law to any religious sect, society or denomination**; ...**and the civil rights, privileges or capacities of no person shall be taken away, or in anywise diminished or enlarged**, on account of his belief or disbelief of any religious tenet, dogma or teaching. **No human authority shall**, in any case whatever, **control or interfere with the rights of conscience**." (emphasis added); **Ky Const § 10. Security from search and seizure; conditions of issuance of warrant** [id., page 26 hereof], i.e., "The people shall be secure in their persons, houses, papers and possessions, from unreasonable search and seizures; and **no warrant shall issue to search any place, or seize any person or thing**, without describing them as nearly as may be, **nor without probable cause** supported by oath or affirmation."

(emphasis added); **Ky Const § 12**: [id., page 26 hereof], i.e., "No person, **for an indictable offense**, shall be proceeded against criminally by information..., or by leave of court for oppression or misdemeanor in office." (emphasis added); (continued, page 62 hereof)

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[47] (continued from page 61 hereof): **Ky Const § 17. Excessive bail or fine, or cruel punishment, prohibited** [id., page 27 hereof], i.e., "**Excessive bail shall not be required, nor...cruel punishment inflicted.**" (emphasis added); **509.040 Kidnapping** [id., page 36 hereof], i.e., "(1) A person is guilty of kidnapping when he **unlawfully restrains another person** and when his intent is: (b) **To accomplish or to advance the commission of a felony**; (2) Kidnapping is a Class B felony when the victim is released in a safe place prior to trial, except as provided in this section." (emphasis added); **514.030 Theft by unlawful taking or disposition** [id., page 37 hereof], i.e., "(1) Except as otherwise provided in KRS 217.181 or 218A.1418, **a person is guilty of theft by unlawful taking or disposition when he unlawfully: (a) Takes or exercises control over moveable property of another with intent to deprive him thereof**; (2) Theft by unlawful taking or disposition is a Class A misdemeanor unless the **value of the property is three hundred dollars or more**, or unless the property is a firearm (regardless of the value of the firearm), in which case it is a **Class D Felony**." (emphasis added); **514.080 Theft by extortion** [id., page 37 hereof], i.e., "(1) A person is guilty of theft by extortion when he intentionally obtains the property of another **by threatening to**: (b) **Accuse anyone of a criminal offense**; or (c) **To expose a secret tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business repute**; ...(3) theft by extortion is a Class A misdemeanor unless the value of the **property obtained is three hundred dollars or more**, in which case it is a **Class D felony**." (emphasis added); **514.110 Receiving stolen property** [id., page 37 hereof], i.e., "(1) A person is guilty of receiving stolen property when he **receives, retains, or disposes of moveable property of another** knowing that it has been stolen, unless the property is received, retained, or disposed of with intent to restore it to the owner. (2) The possession by any person of any recently stolen property shall be ***prima facie*** evidence that such person knew that such property was stolen. (3) Receiving stolen property is a Class A misdemeanor unless the **value of the property is three hundred dollars or more**, or unless the property is a firearm (regardless of the value of the firearm), in which case it is a **Class D felony**." (emphasis added); **Kentucky Rules of Evidence**: **K.R.E. 404. CHARACTER EVIDENCE AND EVIDENCE OF OTHER CRIMES** [supra, page 40 hereof], i.e., "**(a) Character Evidence Generally**: Evidence of a persons character is **not admissible** for the purpose of proving action in conformity therewith on a particular occasion, **except**: (1) *Character of accused*: Evidence of a pertinent trait of character or of the general moral character **offered by the accused**...; (2) *Character of Victim Generally*: Evidence of a pertinent trait of character of the victim of the crime **offered by the accused**...; **(b) Other Crimes, Wrongs, or**

Acts. Evidence of other crimes, wrongs, or acts **is not admissible** to prove the character of a person in order to show action in conformity therewith. ...**(c) Notice Requirement**. In a criminal case, if the prosecution intends to introduce evidence pursuant to subdivision (b) of this rule as a part of its case in chief, it **shall give reasonable pretrial notice to the defendant** of its **intention** to offer such evidence. **Upon failure of the prosecution to give such notice the court may** exclude the evidence offered under subdivision (b) or for cause shown may excuse the failure to give such notice and **grant the defendant a continuance or such other remedy as necessary to avoid unfair prejudice caused by such failure**." (emphasis added); **K.R.E. 602. LACK OF PERSONAL KNOWLEGE** [id., page 41 hereof], i.e, "A witness may not testify to a matter..." (continued, page 63 hereof)

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35. On May 16, 1994, Bishop visited Dr. Adrian Fulmer, her family practitioner in Lexington. Dr. Fulmer's records, and later testimony at trial, revealed that he **saw no signs of injury about her head, neck, or upper body**, and **[Bishop's] "range of motion [in all extremities] appeared to be normal"**. [see TT #1, 05/20/96, 15:31:10, & 15:40:50, et seq.; and TT #2, 10/27/98, 10:54:50 et seq. (emphasis added)]

36. On May 18, 1994, Bishop visited Dr. Mark Einbecker, an Orthopedic Surgeon in Lexington. Dr. Einbecker's records, and his later testimony, revealed that he saw no signs of injuries about Bishop's head, neck, or upper body; "[Bishop's] range of motion in all extremites appeared to be normal"; and that he "couldn't tell if Bishop's symptoms were physical or emotional". Dr. Einbecker also noted and testified that Bishop suffered from "Degenerative Disk Disease", a pre-existing and long-standing "arthritic condition". [TT #2, 10/27/98, 16:27:16, et seq.] Dr. Einbecker also stated: "**Based on the X-rays taken, there's**...

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[47] **K.R.E. 602. LACK OF PERSONAL KNOWLEGE** (continued from page 62 hereof): "...unless evidence is introduced to support a finding that the witness has **personal knowlege** of the matter." (emphasis added); **K.R.E. 1101. APPLICABILITY OF RULES** [id., page 41 hereof], i.e., "**(a) Courts**. These rules apply to **all the courts of this Commonwealth in the actions, cases, and proceedings** and to the extent hereinafter set forth. ...**(c) Rules on Privileges**. The rules with respect to **privileges apply at all stages of all actions, cases, and**

proceedings." (emphasis added); hereinbefore paragraphs E-12 through E-14, E-16, E-21, E-22, E-24 through E-26, E-31, & E-32; hereinafter paragraphs E-38 thru E-41, E-43, E-44, E-46, E-50(f), E-56(a), E-56(b), E-56(e), E-61, E-62, E-65, E-66, E-70, E-72, E-73 thru E-79, E-81, E-82, et seq.; and TT#2, T. Layne, 10/27/98, 11:18:00, et seq. **Akers was further remanded to custody** pending the May 19, 1994, hearing/trial **and remained in custody until transported directly** to Lexington's [Kentucky] Bluegrass Airport en route to the Hazelden Foundation, in Minnesota. (see hereinafter paragraphs E-38, et seq.)

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no doubt in my mind that she had a pre-existing condition prior to this altercation" [TT#1, M. Einbecker, 05/20/96, 14:27:55]; and that "**Herniations do occur naturally**..." [id., 14:32:40]

37. As well, on May 18, 1994, Akers was arraigned before the same Fayette District Court Judge David Hayse who had issued the initial "Domestic Violence Order and Summons" in hereinabove paragraph E-32. The following transcript is a **verbatim account** of that arraignment/hearing:

Judge Hayse:	Number one. Gorden Akers. I guess that's one and two. Gorden – James Gorden Akers?
Bailiff:	He's in custody, your honor.
Prosecutor:	Your Honor, I'd like to cut right to
Bailiff:	Mr. Akers.
	– (inaudible)–
Judge Hayse:	Ms. Rabits your attorney?
Akers:	Beg pardon?
Judge Hayse:	Ms. Rabits your attorney?
Akers:	Yes.

Judge Hayse: Did she understand that you were going to be here today?

Akers: Uh, no Sir. I didn't know myself I was supposed to be here today. Uh, what's the--

Judge Hayse: Well, you're charged with terroristic threatening and assault in the 4th degree.

Akers: Uhhhhh --

Judge Hayse: Were you arraigned on these--last Thursday, maybe? Remember being in 1:00 or 12:30 court?

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Akers: Yes, Sir. Yes, Sir. But I thought this was was supposed to be heard again tomorrow.

Judge Hayse: You probably have some Domestic Violence matters that are being heard, as well. And those, while they may be out of the similar or same spousal situation, they are different charges.

Akers: Sir, I didn't terrorize anyone that I'm aware of.

Judge Hayse: Well, I -- I don't want to talk about the specifics for you -- at this stage. -- Go ahead, I'm sorry.

Prosecutor: If he wanted to plead today – uh – we would be willing to merge the terroristic threatening into the assault. One hundred and costs.

Judge Hayse: Well, are you on probation for anything at this stage?

Akers: No Sir. No Sir. – (pause) – **This all basically stemmed from one incident – or one incident for two or three days.**

Judge Hayse: I really sorta think he needs to have his attorney here. This doesn't even show assault fourth. It shows emergency detention and temp –

Prosecutor: I've got it right here –

Judge Hayse: Oh, there is a separate one?

– (pause) –

– (inaudible) –

Judge Hayse: Did they escort you to Eastern State, sir?

Akers: Yes Sir.

Judge Hayse: And they turned around and released you back?

Akers: They brought me back over here, yes. I was pretty heavily intoxicated, Sir.

Judge Hayse: Well, I'm gonna do one of two things. I'll continue to give you a chance to contact your attorney. The County has indicated that the would recommend $100 and costs on one count of assault fourth. Is that correct?

Prosecutor: Yes, Your Honor.

Judge Hayse: Now, I'm not – You have a right to talk to your attorney and you may prefer to do that.

Akers: Uh, I don't have a problem with that. That sounds – that sounds fair to me.

Judge Hayse: You understand you'd be giving up your right to talk to an attorney if you plead guilty?

Akers: Yeah, that's fine. I, that's, that's very–

Judge Hayse: Do you understand you'd be giving up your right to a jury trial?

Akers: That's correct. The $100 -- uh – and costs for that particular incident would be more than reasonable as far as I'm concerned.

Judge Hayse: Well, I agree with you, sir. I just

want to make sure you understand what you're doing.

Akers: I, I, I understand. I've had quite a bit of experience in court. Now – not in criminal courts before, okay?

Judge Hayse: **Alright, so how do you plead to fourth degree assault?**

Akers: **I plead guilty to that, Sir.**

Judge Hayse: **Merge the terroristic threatening; $100 and costs on the assault fourth.** I'll set it for fine payment August 17th. It must be paid, in full, before August 17th. Now, are you being held on the domestic violence matter?

Akers: No, Sir. I think I'm being held on contempt of court –uh– is what I'm being held for.

Judge Hayse: Alright. Well, this releases you on these two charges, but it's probably not going to release you --

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Akers: **So this releases everthing except for the contempt of court, is that right?**

–(inaudible)–

Judge Hayes:	**Well it sounds like it, but I'm not sure.**
Akers:	**I think it does.**
Judge Hayse:	And you're going back to court tomorrow on that.
Akers:	Tomorrow -- as I understand it, and that should be wrapped up tomorrow, as well, Sir.
Judge Hayse:	**Well, I hope that you understand the seriousness of what you've been going through and do not have any further contact with the other party.**
Akers:	I, I, certainly understand that now, Sir.
Judge Hayse:	Okay, Good luck.
Akers:	Thank you.

[**Note**: A Certified Transcript of the hereinabove hearing/trial has not yet been prepared. However, Akers was provided a copy of the audio-taped transcript by Fayette District Court and the same is, hereby, incorporated herein by reference as Exhibit "O" hereto]

38. On May 19, 1994, a hearing/trial was conducted before Fayette (Kentucky) District Court Judge Thomas Clark, charging Akers with "**Contempt of Court**" (pursuant to that outlined in hereinabove paragraphs E-32 & E-33), and "Domestic Violence" (pursuant to that which is outlined in the hereinabove paragraph E-31). Akers was sentenced to six months (6) in jail for the "Contempt of Court" charge (to be suspended if Akers

completed an alcohol treatment program at Hazelden, in Minnesota), and a...

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"Domestic Violence Order" was entered imposing sanctions upon Akers to have "no contact with [Bishop]:" ..."**by remaining at all times at least 1,000' away from [her]**"[48] for a period of one year. Hereunto relevant portions of the "Certified Transcript" of that hearing/trial [see Exhibit "P" hereto] include, but are not limited to, the following:

Akers' Attorney:	Your Honor, the reason I'd asked for the break was, um, I thought there might have been charges brought that I was not aware of that would create a double jeopardy issue, but the fact -
	– (inaudible) –
	citations issued by the police officers whenever they went to his house that night, so that would not create a double jeopardy issue in this case.
Judge Clark:	I think I previously –
Akers' Attorney:	Swore both witnesses –
Judge Clark:	I think I swore both witnesses in.[49]

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[48] **See: Vagueness Doctrine** [supra, page 31 hereof], i.e, "...**a law, (e.g., criminal statute) which does not fairly inform an ordinary person of what is commanded or prohibited is unconstitutional as violative of due process.**"; and "**Void for vagueness doctrine** [id.], i.e., "A law which is so obscure in its

promulgation that a reasonable person could not determine from a reading what the law purports to command or prohibit is violative of due process." See also: K.R.S. 505.010 Entrapment [supra, page 32 hereof], i.e., "A person is not guilty of an offense arising out of a proscribed conduct when: (a) He was induced or encouraged to engage in that conduct by a public servant or by a person acting in cooperation with a public servant seeking to obtain evidence against him for the purpose of a criminal prosecution; and (b) At the time of the inducement or encouragement, he was not otherwise disposed to engage in such conduct. (emphasis added)

[49] See: K.R.S. 505.040 [supra, page 33 hereof] and corresponding footnote [34]; and K.R.S. 505.030 (4) [supra, page 34 hereof], esp., with respect to: "The former prosecution was improperly terminated after the first witness was sworn but before findings were rendered by the trier of fact." (emphasis added)

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Akers' Attorney: Yes. [page 1, lines 3 through 13]

Judge Clark: Mrs. Akers, you have filed a domestic violence petition with this court alleging that **on, or about, May the 4th here in Fayette County certain acts of domestic violence or abuse occurred**. Are the allegations in that petition true and correct? [page 2, lines 11 through 18] (emphasis added)

Mrs. [Bishop]: Your Honor, may I say something? [page 12, line 17]

Judge Clark: Yes, ma'am. [page 12, line 19]

Mrs. [Bishop]: **On May the 4th he pulled me out of the bed by the hair of my head and drug me into the hallway, he hit me in the mouth with his fist a couple of times**[50]

and he kicked me, and there's a hole in the hallway wall and I'm not sure how it got there. [page 12, lines 21 thru 23; page 13, lines 1 through 4,] (emphasis added)

Judge Clark: For purposes of the record, as far as the initial domestic violence petition, **I'm going to make a finding of fact that there is evidence to believe that domestic violence or abuse has occurred.**[51] At this point, Mr. Akers, ...

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[50] It is **absolutely scurrilous** for Bishop to allege that Akers, who was 6'2" tall, 238#, and in excellent health at the time, could have committed these acts and left no residual signs thereof other than a "slightly swollen lip" (see hereinabove paragraphs E-31(ee), E-31(ss) thru E-31(vv), E-35, & E-36; and hereinafter paragraphs E-81, E-86, E-87, E-96, E-110, E-111, & E-119.

[51] See: **K.R.S. 403.720(1)**" [supra, page 29 hereof], i.e., "'**Domestic violence**' and abuse **means physical injury, serious physical injury, ...or assault between family members**...; & ...(2) '**Family member**' **means a spouse**..." (emphasis added); **K.R.S. 403.7505(2)(a)** [supra, page 30 hereof], i.e., "'**Domestic Violence**' includes...physical...abuse, and **is considered criminal conduct**" (emphasis added); **K.R.S. 500.080** [supra, page 32 hereof], i.e., "As used in the Kentucky Penal Code, ...(13) "'**Physical injury**' means substantial pain or any impairment of physical condition; ...(15) '**Serious physical injury**' means physical injury which **creates a substantial risk of death**, or which **causes** serious and...prolonged impairment of the function of any bodily organ." (emphasis added)

I'm going to enter a restraining order that at this point restrains you from committing – from any further contact with Ms. [Bishop], also to remain at least a thousand

feet from her at all times. ...Additionally, a consideration or condition of that order will be as well that when the space becomes available at Hazelden in Minnesota that you will present yourself to that facility and complete what I believe is what? A thirty-day program? [page 14, line 17 thru page page 15, line 21] (emphasis added)

Judge Clark: **Additionally, on the issue of contempt, Mr. Akers, I'm going tofind that you are in contempt**[52] of the Emergency Protective Order that was in fact entered and served and that in fact you were served with. **I'm finding you in contempt**[53], **I'm going to impose a sentence of six months on that matter**. -- the balance of that time will be suspended conditioned upon you completing that [Hazelden] program. [page 22, lines 1 through 24][52] (emphasis added)

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[52] See: **K.R.S. 403.760** [supra, page 30 hereof], i.e., "(1) Violation of the terms or conditions of an order under the provisions of KRS 403.740 or 403. 750, whether an emergency protective order, or an order following hearing, **after service of the order on the respondent**, or notice to the respondent, **shall constitute contempt of court**; (5) **Civil proceedings and criminal proceedings are mutually-exclusive. Once either has been initiated, the other may not be undertaken regardless of the outcome of the original proceeding**. (emphasis added); **Menna v. New York**, 423 U.S. 61, 96 S.Ct. 241, 46 L.Ed (2d) 195 (1975), i.e., "[w]here 30-day sentence was imposed after adjudication for contempt of court, ...contempt adjudication was criminal conviction." [see also: **Menna v. New York**, supra, footnote [4], page 10 hereof]; and TT#3, L. Red Corn, 05/21/96, 09:53:25.

[53] **Akers was again remanded to custody and then remained in custody until transported directly from the Fayette (Kentucky) County Detention Center to Lexington's Bluegrass Airport en route to Hazelden Foundation**, in Minnesota, on May 30, 1994 (see footnote [44] above, i.e, "[the] **contemnor** holds the keys to the jail in his pocket and **is entitled to immediate release upon his willingness to abide by the court's orders**.") A "Domestic Violence Order" was then entered which formalized the Court's rulings and **now alleged that Akers was "believed to be armed/dangerous"**. [see Exhibit "Q" hereto]

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39. On May 26, 1994, Bishop received X-rays of her neck at Central Baptist Hospital in Lexington. Dr. Scott Stevens' "Report" [Exhibit "R" hereto] notes as follows:

> "1. There are **abnormalities at multiple levels in the cervical spine**. (emphasis added)
>
> 2. There is a moderate size central and to the right focal disc herniation at C5-C6.
>
> 3. There is a moderate size central and to the right focal disc herniation at C6-C7.
>
> 4. There is a small focal disc bulge or small focal herniation to the right at C3-C4."

[**Note**: It is crucial to note, at this point, that Bishop's subsequent X-rays on 01/24/97 resulted in notations by Dr. Dennis R. Whaley, of the same Central Baptist Radiology Department, as follows:

> "IMPRESSION: There is fusion of the bodies of C5 and C6 with **degenerative change at other levels in the cervical spine**. Only minimal neural foraminal encroachment is evident on the oblique views." [See Exhibit "S"... (emph. added)]

40. Capitalizing on the "Nichole Brown Simpson/Ronald Goldman Tragedy" of June 12, 1994, and Kentucky's newly-enacted "Domestic Violence" laws in the furtherance of those schemes as outlined in hereinabove paragraphs E-12 through E-14, E-16, E-24, E-25 through E-29, & E-31 through E-38, Bishop filed a "Petition for Dissolutionment of Marriage" in June of 1994, **while Akers was at the Hazelden facility**.

41. Having continued to feign injuries as the purported result of those events in hereinabove paragraph E-31, on June 16, 1994, Bishop visited Dr. John J. Vaughan (an Orthopedic..,

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Surgeon in Lexington, Kentucky, and hereinafter Vaughn") with the intent to obtain/extract a diagnosis to serve her objectives outlined in hereinabove paragraphs E-12 through E-14, E-16, E-24, E-25 through E-29, & E-31 through E-40. Bishop further concealed from Vaughn the fact that she previously experienced similar, if not identical, symptoms for in excess of five years prior thereto. [TT#1, J. Vaughn, 05/20/96, 13:32:42; Exhibits "B" through "K" hereto; and "**'Fraud' defined**" (footnote [7], page 13 hereof)]

42. Notwithstanding the obvious causative factors which Vaughn **should have identified** as the source of Bishop's alleged symptoms, i.e., as the result of an **inherited, pre-existing, and long-standing "arthritic condition"** (as detected by Drs. Fulmer and Einbecker), Dr. Vaughn, who being less than two years into establishment of his medical practice, capitalized on Bishop's scheme and the then "hot political issue" of "Domestic Violence" by seizing the opportunity to perform a major surgery, **knowing that the insurance benefits would be unchallenged** in absence of disclosure of a "pre-existing condition" as the "causation" of Bishop's condition and hereinafter-noted **elective surgery**.[54]

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[54] Vaughn subsequently admitted, under oath, under cross-examination, that Bishop's medical records and his examination during surgery, revealed that Bishop was suffering from both "degenerative disc disease" and "arthritis"

"before her 'injury'" **and that neither could have been caused by Akers** on, or about, May 5, 1994. Vaughn further admitted that those same "pre-existing conditions" of Bishop could have, **in themselves, been the causation of her herniated discs**. [see TT#1, J. Vaughn, 05/20/96, 14:14:40, et seq.; TT#1, J. Vaughn, 10/26/98, 16:27:40, 16:37:49, 16:47:30, 16:49:00, 16:50:25, 16:51:15, 16:51:40, & 16:53:00; and hereinafter paragraphs E-48, E-49, E-56(e), E-86, E-87, E-96, E-110, E-111, and E-121 thru E-127.

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43. On June 29, 1994, Akers was discharged from Hazelden, having completed the program ordered by Judge Clark as outlined in hereinabove paragraph E-38 [see "Discharge Summary", Exhibit "T" hereto] and, upon returning to the Akers' marital residence on that same date, Akers discovered that: (a) Bishop, Fleming, Layne, and an unknown number of CBT Does 1 through 30 and/or SCC Does 1 through 40 had already moved Bishop out of that home and removed all property Bishop wanted[55]; (b) including **hundreds of photographs, greeting cards, and mementos, etc.,**[56] which would have proven that Bishop's later allegations of long-term and/or ongoing "domestic violence and abuse" were fraudulent; **and (c)**...

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[55] See: TT#2, C. Bishop, 10/27/98, 09:49:45; TT#2, D. Fleming, 10/27/98, 13:28:50; and TT#2, J. Preston, 10/27/98, 14:25:25. See also: **ARTICLE IV-SECTION 2, U.S. Const.** [supra, page 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emphasis added); **U.S. Const. Amend. 4** [supra, page 7 hereof], i.e., "The right of the people to be secure in their **persons**, houses, papers, and effects, against unreasonable searches and **seizures**..." (emphasis added); **U.S. Const. Amend. 14** [supra, page 10 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its**..." (continued, page 74 hereof)

[56] See TT#2, C. Bishop, 10/27/98, 09:49:45; **TITLE 18 U.S.C. § 1512** [supra, page 14 hereof], i.e., "(b) **Whoever** knowingly...or **corruptly persuades another person, or attempts to do so**, or engages in misleading conduct toward another

person, **with intent** to– (2) **cause or induce any person to**– (B) **alter**, destroy, **mutilate**, or conceal **an object with intent to impair the object's** integrity or **availability in an official proceeding**; shall be fined under this title or imprisoned not more than ten years, or both." (emphasis added); and **K.R.S. 524.100. Tampering with physical evidence** [supra, page 38 hereof], i.e., "(1) **A person is guilty of tampering with physical evidence when, believing that an official proceeding is pending or may be instituted, he**: (a) Destroys, mutilates, conceals, **removes**, or alters **physical evidence** which he believes is about to be produced or used in the official proceeding **with intent to impair its** verity or **availability in the official proceeding**; (2) Tampering with physical evidence is a Class D felony." (emphasis added)

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[55] **U.S. Const. Amend. 14** (continued from page 73 hereof): "... **jurisdiction** equal protection of the laws" (emphasis added); **TITLE 18 U.S.C. § 2. Principals** [supra, page 11 hereof], i.e., "(a) Whoever **commits** an offense against the United States or **aids, abets, counsels**, commands, **induces, or procures** its commission, **is punishable as a principal**. (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." (emphasis added); **TITLE 18 U.S.C. § 3. Accessory after the fact** [id.], i.e., "Whoever, knowing that an offense against the United States has been committed, **receives, relieves**, comforts **or assists** the offender in order to hinder or prevent his apprehension, trial or punishment, **is an accessory after the fact**." (emphasis added); **TITLE 18 U.S.C. § 4. Misprison of felony** [id.], i.e, "Whoever, **having knowledge** of the actual commission of a felony cognizable by a court of the United States, **conceals and does not as soon as possible make known the same** to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years or both." (emphasis added); **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights** [supra, page 16 hereof], i.e., "**Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." (emphasis added); **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights** [id. pages 16 & 17 hereof], i.e., "(2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws**, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, or class of persons, to the

equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy,** whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators" (emphasis added); **K.R.S. 514.030 Theft by unlawful taking or disposition** [supra, page 37 hereof], i.e., "(1) Except as otherwise provided in KRS 217.181 or 218A.1418, **a person is guilty of theft by unlawful taking or disposition when he unlawfully: (a) Takes or exercises control over moveable property of another with intent to deprive him thereof;** (2) Theft by unlawful taking or disposition is a Class A misdemeanor unless the **value of the property is three hundred dollars or more,** or unless the property is a firearm (regardless of the value of the firearm), in which case it is a **Class D Felony**." (emphasis added); and **K.R.S. 514.110 Receiving stolen property** [id.], i.e., "(1) A person is guilty of receiving stolen property when he **receives, retains, or disposes of moveable property of another** knowing that..." (continued, Page 75 hereof)

$19,300.00 cash, which was **clearly identified/marked** as property of "Coleman/Akers & Akers, Inc." (C/AA), was properly secured in a **locked** "Night Depository" bank bag, and had remained **locked** in Akers' briefcase.[56]

44. (a) On July 2, 1994, Bishop (wearing a "soft collar" neck brace) and Layne appeared together on a regional telecast of the previous Sunday's morning worship service at Southland Christian Church (SCC); (b) portrayed Bishop as the victim of an "abusive twenty-five year marriage"; and (c) appealed to the audience and congregation to provide aid and comfort to her.[57]

45. On July 14, 1994, Akers once again "swallowed his pride" and, in effort to salvage his marriage, family, and home, telephoned Bishop at her office at CBT and made the following **single statement**: "This is Gorden, and I still love you."

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[55] **K.R.S. 514.030** (continued from page 74 hereof): "... it has been stolen, unless the property is received, retained, or disposed of with intent to restore it to the owner. (2) The possession by any person of any recently stolen property shall be ***prima facie*** evidence that such person knew that such property was stolen. (3) Receiving stolen property is a Class A misdemeanor unless the **value of the**

property is three hundred dollars or more, or unless the property is a firearm (regardless of the value of the firearm), in which case it is a **Class D felony**." (emphasis added)

[56] Note: Only Akers and Bishop knew the combination to Akers' briefcase and the same brief case, **and locked bank bag**, remained **completely intact** upon Akers' return from Hazelden Foundation.]

[57] This service was actually filmed by Donald Shannon (herein Shannon) on 06/26/94. See also: **Title 18 U.S.C. §§ 2, 3, & 4** [supra, page 11 hereof]; **Title 18 U.S.C. § 875** [supra, page 12 hereof]; **Title 18 U.S.C. §§ 1961, et seq.** [supra, pages 14 & 15 hereof]; **Title 42 U.S.C. § 1985(3)** [supra, page 16 hereof]; **K.R.S. 514.080** [supra, page 37 hereof]; hereinabove paragraphs E-8 through E-14, E-16 through E-29, E-31 through E-36, E-38 through E-43; and hereinafter E-47, E-50, E-51, E-56 through E-58, E-81, E-82 through E-87, E-89, E-90, E-95, E-98, E-107, E-109 through E-111, E-119 through E-121, and E-123 through E-125.

Bishop reacted by yelling: "**Well, I don't love you! Just sign the papers and get this over with!**" [see TT#1, L. Red Corn, 05/20/96, 11:01:30]. About three hours later, Akers was again arrested for "Contempt of Court" and sentenced to ten days in jail by the hereinabove Judge David Hayse.

46. Then conceding that any reconciliation with Bishop had become virtually impossible, **Akers made no further attempts to contact her; was extremely careful not to go within miles of her**; began to date other ladies; proceeded to negotiate a "settlement" with Bishop's attorney, Jerry L. Kelly (hereinafter "Kelly"); and make plans to move back to Nashville, Tennessee.[58]

47. At some time prior to the month of August, 1994, and in overt effort to entrap Akers into violating the "1,000'" restriction imposed by the hereinabove "Domestic Violence Order" (see paragraph E-38 hereinabove), Bishop obtained a Post Office Box at the Lansdowne [Lexington, Kentucky 40524] Branch of the United States Post Office being fully-cognizant that Akers had maintained a box at that same location since 1988 on behalf of...

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[58] See: **Article I-Section 9, U. S. Constitution** [supra, page 5 hereof], i.e., "**The migration** or importation **of...persons** as any of the states...shall think proper to admit, **shall not be prohibited**..." (emphasis added); **ARTICLE IV- SECTION 2** [id., page 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states"; **U. S. Const. Amend. 14** [supra, page 8 hereof], i.e., "**All persons born** or naturalized **in the United States**, ...are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; nor shall **any state** deprive any person of life, **liberty**, or property, without **due process of law**" (emphasis added); and **Ky Const § 24** [supra, page 15 hereof], i.e., "**Emigration** from the State **shall not be prohibited**"; (emphasis added).

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hereinabove C/AA, and that Akers had diligently picked up mail at that location twice daily since 1988.[59]

48. On August 30, 1994, Bishop underwent surgery, under the advice and orchestration of Dr. Vaughn, and Bishop sustained a permanent twenty to twenty-five percent reduction in mobility of her neck as the proximate result thereof.[60]

49. On, or about the first week of September, 1994, Dr. Vaughn fraudulently invoiced Bishop's insurance underwriter (believed to be Cordage of Lexington) for his services outlined in hereinabove paragraphs E-38, E-39, & E-44 and, at some point thereafter, received compensation for services as invoiced.[61]

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[59] This was **obviously** a covert attempt, conspired by Bishop, Fleming, Layne, et al, to have Akers further imprisoned for six (6) to twelve (12) months in Fayette County [Kentucky] Detention Center, pursuant to provisions of **K.R.S. 403.740** [supra, page 29 hereof], with all previous attempts of those said conspirators to have Akers evicted from 3544 Boston Road, Lexington [Fayette County], Kentucky, having failed. See also: herein paragraphs E-12, E-14(d), E-16, E-24, E-33 thru E-44; **K.R.S. 505.010** [supra, page 32 hereof]; and TT#1, B. Taylor/L. Red Corn/R. Overstreet, 10/26/98, 13:46:40, et seq.

[60] Regardless of allegations as to "causation" (see hereinabove paragraphs E-2, E-8, E-28, E-35, E-36, E-41, & E-42), there are seven vertebrae (C1 thru C7) in the cervical area of the human spinal column and five corresponding "discs"

between each. The discs between C5-C6 were removed and those two vertebrae were "fused". Thus, 2 out of 7 vertebrae were fused (i.e., 2/7 or 28.57%) and 1 out of five discs were removed and "frozen" (i.e., 1/5 or 20%) and, therefore, a permanent 20% to 28.57% impairment of mobility in Bishop's neck **resulted from the surgery**. **See also**: TT#1, J. Vaughn, 10/26/98, 16:27:40, 16:31:40, 16:32:10, 16:34:30, 16:36:00, 16:37:49, 16:43:00, 16:47:30, 16:49:00, 16:50:25, 16:51:15, 16:51:40, 16:53:00; TT #2, A. Fulmer, 10/27/98, 10:55:00, 10:55:55, 11:00:20; and TT#2, M. Einbecker, 10/27/98, 16:24:25, 16:26:40, 16:27:25, & 16:33:45.

[61] See: **TITLE 18 U.S.C. § 2** [supra, page 11 hereof], i.e., "(a) Whoever **commits** an offense against the United States or **aids, abets, counsels**, commands, **induces, or procures** its commission, **is punishishable as a principal**. (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." (emphasis added); (continued, page 78 hereof)

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[61] (continued from page 77 hereof): **TITLE 18 U.S.C. § 1341** [supra, page 13 hereof], i.e., "Whoever, **having devised or intending to devise** any scheme or artifice to defraud, **or for obtaining money or property by means of false or fraudulent pretenses, ...or attempting so to do**, places in any post office or authorized depository for mail matter, **any matter or thing whatever**, to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be **sent or delivered by any private** or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, **or knowingly causes to be delivered** by such carrier according to the direction thereon, or at the place at which it is directed to be delivered to the person to whom it is addressed, **any such matter or thing**, shall be fined under this title or imprisoned not more than five years, or both." (emphasis added); **TITLE 18 U.S.C. § 1961** [supra, page 14 hereof]: "(1) 'racketeering activity' means...; (B) any act which is indictable under any of the following provisions of title 18, United States Code: ...section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), ...section 1503 (relating to obstruction of justice); ...section 1512 (relating to tampering with a witness, victim, or an informant); (2) 'State' means **any State** of the United States, **any territory** or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof; (3) 'person' includes any individual, or entity capable of holding a legal or beneficial interest in any property; (4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and **any union or group of individuals associated in fact** although not a legal entity; (5) 'pattern of racketeering activity' **requires at least two acts** of racketeering activity, one of which occurred after the effective date of this chapter and at least one of which occurred within ten years after the commission of a prior act of

'racketeering activity'" (emphasis added); **TITLE 18 U.S.C. § 1962** [supra, page 14 hereof], i.e., "(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity...in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, **to use or invest, directly or indirectly, any part of such income**, in aquisition of any interest in, **or the activities of which affect**, interstate commerce; (d) It shall be unlawful for any person **to conspire** to violate any of the provisions of subsection (a), (b), or (c) of this section" (emph. added); **TITLE 42 U.S.C. § 1985** [supra, pages 16 & 17 hereof], i.e., "(2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State** or Territory, with the intent to deprive any citizen ...equal protection of the laws, or to injure him or his property for lawfully enforting, or **attempting to enforce**, the right of any person...to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators" (emphasis added)

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50. (a) Having reached an agreement with Bishop by and through Kelly, on September 23, 1994, Akers sold the marital home at 3:30 p.m.; (b) met Kelly at Akers' bank to execute/ implement that agreement, which; (c) included waivers of any and all further claims or damages on behalf of Bishop [see page 4, Article 6, Exhibit "U" hereto]; (d) questioned Kelly about the authenticity of Bishop's signature thereon insofar as such appeared to be a forgery **as notarized by Kelly**; (e) received assurances of Kelly as to Bishop's signature's authenticity; and, upon Kelly's reassurances that Bishop's signature was authentic and that **she was <u>still considering</u> filing "criminal charges" against Akers**; (f) Akers presented a "Cashier's Check" to Kelly for the same amount agreed-upon by all parties[62]; and (g) advised Kelly that Akers was "moving back to Nashville and [had] to be there Monday".

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[62] See: **TITLE 18 U.S.C. § 2** [supra, page 11 hereof], i.e., "(a) Whoever **commits** an offense against the United States or **aids, abets, counsels**, commands, **induces, or procures** its commission, **is punishishable as a principal**. (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." (emphasis added); **TITLE 18 U.S.C. § 1341** [supra, page 13 hereof], i.e., "Whoever, **having devised or intending to devise** any scheme or artifice to defraud, **or for obtaining money or property by means of false or fraudulent pretenses**, ...**or knowingly causes to be delivered** by such carrier according to the direction thereon, or at the place at which it is directed to be delivered to the person to whom it is addressed, **any such matter or thing**, shall be fined under this title or imprisoned not more than five years, or both." (emphasis added); **K.R.S. 514.080** [supra, page 37 hereof], i.e., "(1) A person is guilty of theft by extortion when he intentionally obtains the property of another **by threatening to**: (b) **Accuse anyone of a criminal offense**; or (c) **To expose a secret tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business repute**; **or** (d) **Use wrongfully his position as a public officer** or servant or employee by performing some act within or related to his official duty, **either express or implied, in a manner affecting some**..." (continued, page 80 hereof)

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[62] **K.R.S. 514.080** (continued from page 79 hereof): "...**person adversely**; (3) Theft by extortion is a Class A misdemeanor unless the value of the **property obtained is three hundred dollars or more**, in which case it is a **Class D felony**" (emphasis added); **K.R.S. 516.030** [supra, page 37 hereof], i.e., "(1) A person is guilty of forgery in the second degree when, **with intent to defraud, deceive**, or injure another, **he falsely** makes, **completes, or alters a written instrument** which is or purports to be or **which is calculated to become or to represent when completed**: (a) a...**contract, assignment**, ...or **other instrument which does or may evidence**, create, transfer, terminate **or otherwise affect a legal right**, interest, obligation, or status; **or (b) A public record or an instrument filed** or required or authorized by law to be filed in or **with a public office or public employee**; (2) Forgery in the second degree is a Class D felony" (emphasis added); **TITLE 18 U.S.C. § 1961** [supra, page 14 hereof], i.e., "(1) 'racketeering activity' means (A) **any act or threat** involving... extortion, ...or **which is chargeable under state law and punishable by imprisonment for more than one year**; (B) any act which is indictable under any of the following provisions of title 18, United States Code: ...section 1512 (relating to tampering with a witness, victim, or an informant); (2) 'State' means **any State** of the United States...**any territory** or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof; (3) 'person' includes any individual, or entity capable of holding a legal or beneficial interest in any property; (4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and **any union or group of**

individuals associated in fact although not a legal entity; (5) 'pattern of racketeering activity' **requires at least two acts** of racketeering activity, one of which occurred after the effective date of this chapter and at least one of which occurred within ten years after the commission of a prior act of 'racketeering activity'" (emphasis added); **TITLE 18 U.S.C. § 1962** [supra, page 14 hereof]: "(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity...in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, **to use or invest, directly or indirectly, any part of such income**, in acquisition of any interest in, **or the activities of which affect**, interstate commerce; (d) It shall be unlawful for any person **to conspire** to violate any of the provisions of subsection (a), (b), or (c) of this section" (emphasis added); **TITLE 42 U.S.C. § 1985** [supra, pages 16 & 17 hereof]: "(2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury ..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State** or Territory, with the intent to deprive any citizen...equal protection of the laws, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person...to the equal protection of the laws; (3)...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators." (emphasis added)

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51. Understandably (in view of those facts in hereinabove paragraphs E-31 through E-34, E-37, E-38, E-45, E-46, & E-50), and believing that **all matters with respect to Bishop had been fully-adjudicated and/or resolved**; there being no outstanding/remaining criminal charges against Akers [see "P.S.I. Report", Page 5, Exhibit "V" hereto]; and, as was his fundamental right pursuant to **Article I-Section 9**, the **United States Constitution**, **as well as § 24** of the **Constitution of Kentucky**, Akers then "migrated" from Lexington, Kentucky, with the remainder of his property (with the exception of his dog and truck) to Nashville, Tennessee, to "start a new life".[63]

52. On October 4, 1994, Akers returned the Akers' son, Alan, to Lexington after Alan had brought Akers' corporate

truck...

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[63] See also: **ARTICLE I-SECTION 9, U. S. Constitution** [supra, page 5 hereof]: "The **migration** or importation of...persons as any of the states...shall think proper to admit, **shall not be prohibited**...; "No bill of attainer or ***ex post facto* law** shall be passed." (emphasis added); **ARTICLE IV-SECTION 2** [id., page 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emphasis added); **FOURTEENTH AMENDMENT** [id., pages 10 & 11 hereof]: "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States"; **Ky Const § 1** [supra, page 26 hereof]: **Rights of life, liberty, worship, pursuit of safety and happiness, free speech, acquiring and protecting property, ...redress of grievances, bearing arms**: "**All men** are, by nature, free and equal, and **have certain inherent and inalienable rights**, among which may be reckoned: **First**: The right of enjoying and **defending their** lives and **liberties**; **Third**: The right of seeking and pursuing their safety and happiness; **Const § 19 (1)** [supra, page 28 hereof], i.e., "No **ex post facto** law, ...shall be enacted" (emphasis added); **Ky Const § 24** [id.], i.e., "**Emigration** from the State **shall not be prohibited**" (emphasis added); **Ky Const § 26** [id.], i.e., "To guard against transgression of the high powers we have delegated, We Declare that **every thing in this bill of rights is excepted out of the general powers of government and shall forever remain inviolate; and all laws contrary thereto or contrary to this Constitution, shall be void**." (emphasis added)

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to Akers in Nashville, but **did not violate any of the terms or conditions of the foregoing "Domestic Violence Order" and no such violations have been alleged**.

53. On October 11, 1994, a "Decree of Dissolutionment" was entered, in Fayette (Kentucky) Circuit Court, dissolving the marriage of Akers and Bishop [see Exhibit "W" hereto]. As an integral part thereof, the hereinabove "Property Settlement Agreement" was incorporated, recorded, and filed therewith.[64]

54. (a) On October 14, 1994, Akers once again returned to Lexington, Kentucky, to re-license his corporate vehicles. (b) As on October 4, 1994, Akers did not violate any of the terms or conditions of the foregoing "Domestic Violence Order" and no

such violations have been alleged. (c) **Thereafter, Akers vowed to never return to Kentucky;** (d) **Akers did not return to any location within the Commonwealth of Kentucky until extradited to Fayette County therein on October 2, 1995**[65]; and (d) **there are no allegations to the contrary**.

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[64] See hereinabove paragraph E-50(d) & (e); and **K.R.S. 516.030** [supra, page 37 hereof], i.e., "(1) A person is guilty of forgery in the second degree when, **with intent to defraud, deceive**, or injure another, **he falsely** makes, **completes, or alters a written instrument** which is or purports to be or **which is calculated to become or to represent when completed**: (a) a deed, will, or codicil, **contract, assignment**, ...or **other instrument which does or may evidence**, create, transfer, terminate **or otherwise affect a legal right**, interest, obligation, or status; **or (b) A public record or an instrument filed** or required or authorized by law to be filed in or **with a public office or public employee**; (2) Forgery in the second degree is a Class D felony" (emphasis added)

[65] Kentucky authorities apparently relied upon **TITLE 18 U.S.C. § 2265** [supra, page 16 hereof (enacted 09/13/94)], i.e., "**Full faith and credit given to protection orders**: **(a) Full faith and credit. -** Any protection order issued **that is consistent with subsection (b) of...**" (continued, page 83 hereof)

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55. Having resided at the Courtyard Inn and/or Residence Inn, in Brentwood, Tennessee, since September 24, 1994; and having already informed the Akers' son, Alan, of Akers' new address and telephone numbers; Akers moved into his new home in Brentwood, Tennessee, on October 24, 1994.

FACTS SUB JUDICE/ FEDERAL JURISDICTION INVOKED

56. (a) On, or about October 28, 1994, Akers began to receive anonymous telephone calls at his hereinabove residence, during which the calling party would simply hold the phone and remain silent; and (b) Akers having heard that Bishop had been complaining (to several individuals) that she "didn't get anything out of the divorce"[66]; and (c) suspecting that she "needed help"; (d) Akers phoned Allen Rushing (Bishop's boss at CBT and...

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[65] **TITLE 18 U.S.C. § 2265** (continued from page 82 hereof): "... **this section** by the court of one State...(the issuing State...) shall be accorded full faith and credit by the court of another State ...(the enforcing State...) and enforced as if it were the order of the enforcing State..." However, § (b) thereof **clearly states**: "Protection order. - A protection order issued by a State...**is consistent with this subsection [only] if-** (1) such court has **jurisdiction over the parties** and matter under the law of such State...; and (2) **reasonable notice and opportunity to be heard is given** to the person against whom the order is sought sufficient **to protect that person's right to due process.** In the case of ex parte orders, **notice and opportunity to be heard must be provided** within the time required by State...law, and **in any event within a reasonable time** after the order is issued, sufficient **to protect the respondent's due process rights.**" (emphasis added); See also: hereinafter paragraphs E-68, & E-70 through E-77.

[66] See: **K.R.S. 505.010 Entrapment** [supra, page 32 hereof], i.e., "**A person is not guilty** of an offense arising out of a proscribed conduct **when**: (a) **He was induced or encouraged** to engage in that conduct by a public servant or **by a person acting in cooperation with a public servant seeking to obtain evidence against him for the purpose of a criminal prosecution**; and (b) At the time of the inducement or encouragement, **he was not otherwise disposed to engage in such conduct.** (emphasis added)

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hereinafter "Rushing"), **at his home**, on October 31, 1994, just to inquire as to Bishop's welfare. (e) It was at this time that Akers first learned that Bishop had received surgery on August 31, 1994, and might "file criminal charges" against Akers unless she received more money.[67]

57. The following week, on November 3, 1994, Akers phoned Bishop's attorney (Kelly) and reminded him of their "agreement" of September 23, 1994 [see Exhibit "U" hereto] which waived such...

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[67] See: **TITLE 18 U.S.C. § 2. Principals** [supra, page 11 hereof], i.e., "(a) Whoever **commits** an offense against the United States or **aids, abets, counsels,** commands, **induces, or procures** its commission, **is punishable as a principal.** (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." (emphasis added); **TITLE 18 U.S.C. § 873. Blackmail** [supra, page

12 hereof], i.e., "Whoever, **under threat** of informing, or as a consideration for not informing, against any law of the United States, **demands...any money or other valuable thing**, shall be fined under this title or imprisoned not more than one year, or both." (emphasis added); **TITLE 18 U.S.C. § 875. Interstate communications** [id.], i.e., "(d) Whoever, **with intent to extort** from any person, firm, association, or corporation, **any money or other thing of value, transmits in interstate** or foreign commerce **any communication** containing any threat to injure the property **or reputation** of...another...**or any threat to accuse...any other person of a crime**, shall be fined under this title or imprisoned not more than two years, or both." (emphasis added); **TITLE 18 U.S.C. § 1961. Definitions** [supra, page 14 hereof], i.e., "(1) 'racketeering activity' means (A) **any act or threat** involving...kidnapping, ...robbery, bribery, extortion, ...or **which is chargeable under state law and punishable by imprisonment for more than one year**; (B) any act which is indictable under any of the following provisions of title 18, United States Code: ...section 1343 (relating to wire fraud), ...section 1503 (relating to obstruction of justice); ...section 1512 (relating to tampering with a witness, victim, or an informant); (2) 'State' means **any State** of the United States, the District of Columbia, the Commonwealth of Puerto Rico, **any territory** or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof; (3) 'person' includes any individual, or entity capable of holding a legal or beneficial interest in any property; (4) 'enterprise' includes any individual, partnership, corporation, association, or other legal entity, and **any union or group of individuals associated in fact** although not a legal entity; (5) 'pattern of racketeering activity' **requires at least two acts** of racketeering activity, one of which occurred after the effective date of this chapter and at least..." (continued, page 85 hereof)

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[67] **TITLE 18 U.S.C. § 1962** (continued from page 84 hereof): "... one of which occurred within ten years after the commission of a prior act of racketeering activity" (emphasis added); **TITLE 18 U.S.C. § 1962. Prohibited activities** [id.], i.e., "(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity...in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, **to use or invest, directly or indirectly, any part of such income**, in acquisition of any interest in, **or the activities of which affect**, interstate commerce; (d) It shall be unlawful for any person **to conspire** to violate any of the provisions of subsection (a), (b), or (c) of this section" (emphasis added); **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights** [id.], i.e., "**Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party

injured in an action at law, suit in equity, or other proper proceeding for redress" (emphasis added); **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights** [id.], i.e., "(2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws,** or to injure him or his property for lawfully enforcing, or **attempting to enforce,** the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy,** whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators" (emphasis added); **United States Constitution: ARTICLE I-SECTION 9** [supra, page 5 hereof], i.e., "[1.] The **migration** or importation of such persons as any of the states...shall think proper to admit, **shall not be prohibited...**" (emph. added); **ARTICLE IV-SECTION 2:** [id. page 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emph. added); **FOURTH AMENDMENT** [id., page 7 hereof], i.e., "The right of the people to be secure in their **persons,** houses, papers, and effects, against unreasonable searches and **seizures,** shall not be violated, and **no Warrants shall issue, but upon probable cause**" (emphasis added); **FIFTH AMENDMENT** [id.], i.e., "No person shall **be held** to answer for ...infamous crime, **unless on a presentment or indictment** of a Grand Jury, **nor shall any person be subject for the same offence to be twice put in jeopardy** of life or limb"; ...**nor be deprived of...liberty,** or property, **without due process of law**" (emph. added); **FOURTEENTH AMENDMENT** [id., page 10 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside. No State** shall make or enforce **any law** which shall abridge the privileges or immunities of..." (continued, page 86 hereof)

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further compensation to Bishop and again questioned whether, in fact, the purported signature of Bishop thereon was authentic.[68]

58. Having been substantially alarmed by the statements of Rushing and Kelly, Akers then attempted to contact Bishop on November 4, 1994, in an effort to ascertain the truth. However, Bishop would either hang up immediately or divert

Akers' calls to other bank personnel, and a new warrant was, apparently, issued against Akers for "Contempt of Court". **Akers was never served with this warrant and was unable to confirm its existence until August 9, 1995.**

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[67] **FOURTEENTH AMENDMENT, United States Constitution** (continued from page 85 hereof): "... citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law;** nor deny any **person within its jurisdiction equal protection of the laws**" (emph. added); **Constitution of Tennessee** [supra, page 18 hereof, et seq.]: **ARTICLE 1, SECTION 8. No man to be disturbed by law.** - "That **no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges,** outlawed, **or exiled or in any manner destroyed or deprived of his life, liberty, or property, but by the judgement of his peers or the law of the land.**" (emph. added); **ARTICLE 1, SECTION 14** [id.], i.e., "**Prerequisites to criminal charge** - That **no man shall be put to answer any criminal charge but by presentment, indictment or impeachment.**" (emphasis added); **Tennessee Criminal Code** [supra, page 21 hereof], i.e., "**39-17-309. Civil rights intimidation.** - (a) The general assembly finds and declares that **it is the right of every person regardless of race, color,** ancestry, or national origin, **to be secure and protected from fear, intimidation, harrassment and bodily injury caused by the activities of groups and individuals.** The general assembly recognizes the **constitutional right of every citizen to harbor and express beliefs on any subject** and to associate with others who share similar beliefs. The general assembly further finds that the advocacy of unlawful acts by groups or individuals against other persons or groups for the purpose of inciting and provoking damage to property and bodily injury or death to persons is not constitutionally protected, poses a threat to public order and safety, and should be subject to criminal sanctions. (b) **A person commits the offense of intimidating others from exercising civil rights who:** (1) Injures or threatens to injure or coerces **another person with the intent to unlawfully intimidate another from the free exercise or enjoyment of any right or privilege secured by the constitution or laws of the state of Tennessee.**"

[68] See hereinabove paragraph E-50(d), E-53, & E-56(e).

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59. On December 8, 1994, Akers met Deborah L. Harvil (Akers' current fiance' and hereinafter "Harvil") in Brentwood, Tennessee. Akers and Harvil quickly developed a quasi-marital relationship and have maintained that relationship since early

March of 1995.

60. Reflecting upon those facts in hereinabove paragraphs E-4 through E-6, E-16, E-17, E-28(b), and E-53, and being reluctant to proceed with his relationship with Harvil until those were resolved[69]; Akers phoned Bishop on, or about December 15, 1994, and inquired as follows: "Have I lost you forever, Carolyn?" Bishop responded: "Yes, Gorden, you've lost me forever." A few hours later, Akers' mother (Woodsie) phoned him and frantically informed Akers that the police had just been to her house "looking for" Akers with "some kind of papers".

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[69] See United States Constitution: **ARTICLE I-SECTION 10** [supra, page 6 hereof]: "**No state shall...pass any** bill of attainer, ***ex post facto* law** or law impairing the obligation of contracts, or grant any title of nobility." (emphasis added); **FIRST AMENDMENT [supra, page 7 hereof]**: "Congress shall make no law respecting ...religion, or prohibiting the free exercise thereof; **or abridging freedom of speech...**; [or the right to] petition the government for redress **of grievances**"; (emphasis added); **FOURTEENTH AMENDMENT** [supra, page 10 hereof]: "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States"; **TITLE 42 U.S.C. § 1985** [supra, page 16 hereof]. **Conspiracy to interfere with civil rights**: (2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State** or Territory, with the intent to deprive any citizen...equal protection of the laws, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to**..." (continued, page 88 hereof)

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61. On January 31, 1995, Akers' mother again phoned Akers in Nashville, and frantically informed him that the police had yet again just been to her residence looking for Akers. Akers...

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[69] **TITLE 42 U.S.C. § 1985** (continued from page 87 hereof): "... **be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators; (emphasis added). See also: **Tennessee Constitution: ARTICLE 1, SECTION 3. Freedom of worship** [supra, page 18 hereof], i.e, "That all men have a natural and indefeasible right to worship Almighty God to the dictates of their own conscience; ...**that no human authority can, in any case whatsoever, control or interfere with the rights of conscience**" (emphasis added); **Tennessee Criminal Code** [supra, page 21 hereof], i.e., "**39-17-309. Civil rights intimidation**. - (a) The general assembly finds and declares that **it is the right of every person regardless of race, color**, ancestry, or national origin, **to be secure and protected from fear, intimidation, harassment and bodily injury caused by the activities of groups and individuals. It is not the intent of this section to interfere with the exercise of rights protected by the constitution of the United States**. The general assembly recognizes the **constitutional right of every citizen to harbor and express beliefs on any subject**... (b) **A person commits the offense of intimidating others from exercising civil rights who**: (1) Injures or threatens to injure or **coerces another person with the intent to unlawfully intimidate another from the free exercise or enjoyment of any right or privilege secured by the constitution or laws of the state of Tennessee.**" (emphasis added); **Ky Const § 1** [supra, page 26 hereof]. **Rights of life, liberty, worship, pursuit of safety and happiness, free speech, acquiring and protecting property, ... redress of grievances, bearing arms**: "**All men** are, by nature, free and equal, and **have certain inherent and inalienable rights**, among wich may be reckoned: **First**: The right of enjoying and **defending their** lives and **liberties**; **Second**: The right of worshipping Almighty God **according to the dictates of their consciences**; **Third**: The right of seeking and pursuing their safety and happiness; **Fourth**: The right of **freely communicating their thoughts and opinions**; **Fifth**: The right of acquiring and **protecting property**; ...**Seventh**: The right to bear arms in defense of themselves..." (emphasis added); **Ky Const § 5** [supra, page 26 hereof]: "**No human authority shall**, in any case whatever, **control or interfere with the rights of conscience**" (emphasis added); **Const § 19 (1)** [supra, page 28 hereof]: "No **ex post facto** law, ...shall be enacted" (emph. added); **Ky Const § 24** [supra, page 28 hereof]: "**Emigration** from the State **shall not be prohibited**" (emphasis added); **Ky Const § 26** [id.]: "To guard against transgression of the high powers we have delegated, We Declare that **every thing in this bill of rights is excepted out of the general powers of government and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void.**" (emphasis added)

responded by calling Bishop at her office and stating: "You G--d-- bitch, you have a law suit staring you in the face that you can't handle." Bishop then immediately hung up on Akers. [see Exhibit "X" hereto]

62. Having "cooled down", and regretting his foul language on the previous day, Akers phoned Bishop on February 1, 1995, and stated as follows: "The truth be known, Carolyn, I still love you and don't want any further problems for either of us. I just want you to leave my mother alone and stop telling lies on me." Apparently, Bishop hung up on Akers and began diverting his calls to other bank personnel. [Exhibit "Y" hereto]

63. As an apparent "follow-up" procedure, the police again appeared at Akers' mother's home in Lexington, March 21, 1995, and unlawfully conducted a full search of that home. Following yet another frantic call from his mother, Akers phoned Bishop at her office and asked: "Do you think you have enough warrants out for my arrest?" As usual, Bishop immediately hung up on Akers.

64. With the exception of those telephone calls detailed in hereinabove paragraphs E-52, & E-54 through E-57, which were all placed from Akers home in Brentwood, Tennessee, [see TT#3, D. Harvil, 05/21/96, 15:27:35], there were **no other incidents of contact or communication"** between Akers and Bishop (and none have been alleged); **nor was Akers ever physically within 200 miles of Bishop, her family, her church, her workplace, her home, or otherwise** [see TT#1, L. Red Corn, 05/20/96, 11:06:35]; **nor did Akers ever knowingly or intentionally...**

"threaten" Bishop, in any manner (other than with a civil lawsuit), **during the period of time specified in Akers' original indictment or amended indictment** for "Stalking in the First Degree".

65. (a) On May 5, 1995, Bishop sought to extend the hereinabove "Domestic Violence Order" which was due to

expire, **by its own language**, on May 18, 1995; (b) Notwithstanding Bishop's actual knowledge that Akers was residing in Nashville, Tennessee, and **had never resided with his mother in Lexington, Kentucky, home**, Bishop purported to have Akers "served" at his mother's address; (c) Bishop then alleged that there was a "weapon involved" in Akers' case [see Exhibit "Z" hereto]; and (d) As the direct result of Bishop's clearly fraudulent misrepresentations with respect to Akers' whereabouts and residence, Akers was never served with a "Summons" directing him to appear in Fayette District Court on May 17, 1995. [see "Domestic Violence Summons", stamped "Expired", Exhibit "AA"]

66. (a) Notwithstanding those facts in hereinabove paragraph E-65, Fayette District Judge Thomas Clark conducted a hearing on May 17, 1995, **at which Akers was not present**[70], and...

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[70] See also: U.S. v. Casciano, 927 F.Supp. 54 N.D.N.Y. 1996, i.e., "11. ...**For purposes of crossing a state line** with intent **to engage in conduct in violation of protective order, if court issuing order has failed to obtain personal jurisdiction** over defendant by service of process, **then order was invalid and prosecution cannot survive**. 18 U.S.C.A. § 2262(A)(1); 12. Due process clause requires that notice be reasonably calculated, **under all circumstances**, to apprise interested parties of penalty of an action and afford them an opportunity to present their objections. **U.S.C.A. Const. Amend. 5.**" (emphasis added)

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invalid pursuant to Akers' "due process rights"[71] secured by the Fifth & Fourteenth Amendments to the United States Constitution.

67. On Father's Day weekend, 1995, Akers' mother (Woodsie) and son (Alan) drove to Nashville to visit Akers and Harvil and, before leaving to return to Lexington, Woodsie informed Akers that the police had yet again been to her home "with some kind of papers for [Akers]".

68. On July 7, 1995 (some seven weeks after "expiration" of the only "Domestic Violence Order" of which Akers was

aware), Akers telephoned Bishop at her office and made the following statement: "I told you to leave my mother alone. I'm going to go for the throat now. I'm going to have to go ahead and sue you." [see Exhibit "BB" hereto]

69. In July of 1995, Akers and Harvil established Cadre Construction Corporation (hereinafter "Cadre"), a "successor-in-fact" to hereinabove Coleman/Akers & Akers, Inc. ("C/AA"), and incorporated said Cadre Construction Corporation under the laws of the State of Tennessee on August 2, 1995. [see "Articles of Incorporation", Exhibit "CC" hereto]

70. On August 9, 1995, Akers was arrested near Nashville, Tennessee, for his first time ever "D. U. I." charge, and the resulting "N. C. I. C." report revealed that Akers was charged in the State of Kentucky with "4th Degree Assault, Contempt of Court, Harassing Communications, and potentially Stalking" [see...

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[71] See: U.S. Const. Amends. 5 & 14 [supra, pages 7 & 10, respectively]; and footnote [5] [id., page 8 hereof]

Exhibit "DD" hereto]. That same evening, Akers was arraigned as a "Fugitive of Justice" and remanded to custody pending a bond hearing in Nashville General Sessions Court.

71. On August 15, 1995, Akers was released from custody on a $60,000 Full Cash Bond and a "Probable Cause Hearing" was set for September 21, 1995, on the "fugitive" charges. It was at that time (08/15/95) that Akers first learned of the "extension" of the "Domestic Violence Order" as detailed in the hereinabove paragraphs E-59 & E-60. **After August 15, 1995, Akers has not, even remotely, violated any of the terms or conditions of that Order and no such violations have been alleged.**

72. On August 22, 1995, Bishop filed/entered a "Criminal Complaint" [Exhibit "EE"], **fraudulently alleging** that Akers had "unlawfully committed the offense [of] K.R.S. 508.140 Stalking in the First Degree"[72] and as grounds therefor that Akers had

intentionally stalked her from November of 1994 through August 22, 1995; that Akers had **"made threats" to her "of serious physical injury and death"**; that she had **"an active Domestic Violence Order on [Akers]"**; and that Akers had "repeatedly made telephone calls" to [Bishop] and members of her family, friends, ...

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[72] **The required elements** of "Stalking in the First Degree -- 508.140" are as follows: "(1) **Intentionally** (2) Stalk another person; and (3) Make an explicit or implicit threat **with intent** to place that person in **reasonable fear** of: (a) Sexual contact as defined in KRS 510.010, or (b) Serious physical injury, or Death; and (4)(a)(i) A protective order or another judicial order as provided in KRS Ch 403 has been issued to protect same victim, and (ii) **Defendant has been served with the summons or order or been given actual notice**; [or (b)(i), (c)(i), and (d) **do not apply**]; and (5) **Venue**." [West Group/Westlaw Publishing, Kentucky Revised Statutes, 1995 Edition (emphasis added)]. **See also**: Hereinabove paragraphs E-51 thru E-68.

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and/or associates "threatening to do serious physical injury" to her and others "such as that" [Akers] "[was] not done with [her]" and **"was going to go for [her] throat"**.[73]

73. As well on August 22, 1995, then Fayette (Kentucky) District Judge Thomas D. Clark (the same Judge Clark who issued the original "Domestic Violence Order" and then granted its "extension" in Akers absence, see hereinabove paragraphs E-29 through E-31, E-35, E-59 & E-60), issued a "Warrant for Arrest" [see Exhibit "FF"] of Akers pursuant to the "Criminal Complaint" as detailed in hereinabove paragraph E-65.

74. On August 29, 1995, Fayette County Attorney Margaret H. Kannensohn issued an "Application for Requisition of James Gorden Akers" [Exhibit "GG"] charging Akers "with the crime(s) of Stalking 1st in violation of KRS 508.140, **having committed an act or acts on or about the 1st day of February, 1995, in the State of Tennessee**, which intentionally resulted in the commission of said crime(s) in Fayette County, Kentucky". (see hereinabove paragraphs E-56 thru E-58, E-60, **esp. E-61**, & E-62).

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[73] This comment was **intentionally** taken **completely** out of context by Bishop inasmuch as it was **clearly made by Akers with reference to Akers' statement on January 31, 1995, in effort to obtain Bishop's agreement to "stop telling lies on [Akers]" and stop harassing Akers' elderly mother** by sending police officers to her house for unlawful purposes [See hereinabove paragraphs E-50(g), E-51, E-53, & E-56 through E-63 **(esp. E-61)**]; and as a covert means for Bishop to bar Akers from pursuing Akers **legal action against Bishop** for her unlawful acts outlined in hereinabove paragraphs A-2, A-3(a) thru (c); E-11, E-14, E-16, E-18, E-24, E-30, E-32 thru E-36, E-38 thru E-42, E-43(a) thru (c), E-44, E-47, E-49, E-50(f), E-56(b), E-60, E-63, E-65(b) thru (d), E-66, & E-67. It is also **crucial herein** to recognize that this "phrase" is used commonly in modern society among sports commentators **and numerous other "high-profile" individuals**; and that Bishop has heard Akers use that phrase, **in a figurative sense, on numerous occasions, since the early 1970's**.

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75. On August 30, 1995, a "Governor's Warrant" was issued by Kentucky Governor Brereton Jones, stating that "James Gorden Akers a/k/a James Gorden Akers, as shown by Criminal Complaint/Affidavit and Warrant for Arrest [is charged with] the crime(s) of Stalking, First Degree, **committed while outside the state** which resulted in the commission of a crime in the County of Fayette, Commonwealth of Kentucky". [see Exhibit "HH" hereto,] (emphasis added)

76. On September 14, 1995, Tennessee Governor Don Sunquist issued a "Rendition Warrant" [Exhibit "II"] stating: "WHEREAS, it has been represented to me by the State of Kentucky, that James Gordon Akers a/k/a James Gorden Akers stands charged by Criminal Complaint/Affidavit & Warrant of Arrest in said State with having committed the crime(s) of Stalking, First Degree, **committed while outside the State of Kentucky**, resulting in the commission of crime in the State of Kentucky and said fugitive is a fugitive from the justice of said State and has taken refuge in the State of Tennessee". (emphasis added)

77. On September 21, 1995, Akers appeared in Court for the "Hearing" as detailed in hereinabove paragraph E-71 [see Exhibit "DD"). Akers and his attorney were prepared to

challenge,[74] by writ of habeas corpus, Akers "fugitive" status and the validity...

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[74] Kentucky authorities, esp., the Fayette County [Kentucky] Attorney's office and [Kentucky] Commonwealth's Attorney's office **refused** to provide Akers and/
or his attorneys with specific dates on which the alleged stalking prior had occurred prior to extradition and, thereby, **effectively foreclosed and barred** Akers' assertion of a **writ of habeas corpus as permitted by both the U.S. and Tennessee Constitutions**. [see CP#1, C. Perkins, 11/10/95, 13:11:11, et seq.]

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of the charges in Kentucky [see Exhibit "JJ" hereto]. Akers was immediately arrested, however, before the Judge was brought in and Court was even convened. Akers was then remanded to custody until extradited to Fayette County, Kentucky, on October 2, 1995, notwithstanding the best efforts of Akers and his attorneys to resolve/discharge all matters amicably.[75] [see Collective Exhibits "KK" hereto]

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[75] "**Interstate extradition** involves a significant...restraint of liberty and, as such, **necessitates a showing of probable cause**." **Wellington v. State of S.D., D.C.S.D.1976, 413 F.Supp., 151**. (emphasis added) See Also: **Walton v. State, 1977, 566 P.2d 765, 98 Idaho 422**; "**Probable cause** to find that a person to be extradited is a **fugitive from justice** in demanding state is a **condition precedent to valid extradition**." **Ross v. Hegstrom, 1969, 254 A.2d. 556, 107 Conn. 403** (emphasis added); "In determining whether a party named in a requisition and rendition warrant is a fugitive from justice, a finding must be made in substance that a crime is alleged, that the named party committed the crime and fled from the demanding jurisdiction, and **it must appear that accused was within the demanding state when crime was committed** so as to constitute him a fugitive by his commission of crime and his **later flight**." **State v. Phillips, 1960, 162 A.2d 113, 62 N.J.Super. 70, affirmed 167 A.2d 175, 34 N.J. 63** (emphasis added); "In extradition proceedings, inquiry is restricted to whether accused is substantially charged with crime in the demanding state, **and whether he was physically in the demanding state at time crime charged is alleged to have been committed**." **People v. ex rel. Johnson v. Ruthazer, 1951, 102 N.Y.S.2d 39, 198 Misc. 1044, affirmed 105 N.Y.S.2d 394, 278 App.Div. 905** (emphasis added); **Clayton v. Wichael, 1966, 141 N.W. 2d 538, 258 Iowa**

1037; Wigehert v. Lockhart, 1946, 166 P.2d 988, 114 Colo. 485; Ex parte Foster, 1936, 61 P.2d 37, 60 Okla.Cr. 50; "No person may be lawfully removed from one state to another by virtue of this [Sec. 2, cl. 2], unless...; 2. He has fled from justice; ..., and if either of these conditions are absent, the Constitution affords no warrant for a restraint of the liberty of any person." Pierce v. Creecy, Mo. 1908, 28 S.Ct. 714, 210 U.S. 387, 52 L.Ed. 1113; Ex parte Morgan, D.C.Cal. 1948, 78 F.Supp. 756, affirmed 175 F.2d 404, certiorari denied 70 S.Ct. 76, 338 U.S. 827, 94 L.Ed. 503; "Under this [Sec. 2, cl. 2] and Federal Extradition Act, 18 U.S.C.A. former § 662 [now §§ 3182, 3195], an extradition is unwarranted unless the accused is a fugitive from justice, and a 'fugitive from justice' is a person who commits a crime within a state and withdraws himself from such jurisdiction without waiting to abide the consequences of his act". Ex parte Montoya, 1943, 135 P.2d 281, 170 Or. 499. (It is apparent that the Kentucky authorities relied on Kentucky v. Dennison, 1861, 65 U.S. 66, 24 How. 66, 16 L.Ed. 717; Appleyard v. Massachusetts, Mass1906, 27 S.Ct. 122, 203 U.S. 222, 51 L.Ed. 161; Ex parte Williams, 1946, ..." (continued, page 96 hereof)

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78. On September 28, 1995, Akers' case was set for hearing before hereinabove Judge David Hayse in the "Domestic Relations Division" of Fayette District Court (as signified by the "Case 94-D-00396-001"). The hereunto relevant portions of the Court "Calender" [Exhibit LL"] for that proceeding are as follows:

"EVENT:	COURT TRIAL *CONTEMPT FORTHWITH ORDER ARREST *IN CUSTODY *25,000 FC/BOND
PROCEEDINGS:	cont 10-3-95 930 for county to determine if Double Jeopardy, Subp Pet."

79. On October 3, 1995, Akers was ordered remanded to the Fayette County Detention Center upon an "Order of Commitment" [Exhibit"MM" hereto ("Case No. 94-D-00396-001")] "having been sentenced on the charge of 'Violation of Protective Order'".[75]

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[74] "**Interstate extradition** (continued from page 95 hereof): "...**21 N.W.2d, 593, 71 S.D. 95**; **Olso v. Thurston, Me.1978, 393 A.2d 1320**; and, **especially, Com. ex rel. Marshall v. Gedney, 1975, 352 A.2d 528, 237 Pa.Super. 372, affirmed 386 A.2d 942, 478 Pa. 299**, as authorities for Akers' extradition. Those cases, however, do not encompass, ***inter alia***, "**fraud**" [see **TITLE 18 U.S.C. § 1341 and corresponding footnote [4]**, page 11 hereof]; "**conspiracy**" [see **TITLE 42 U.S.C. § 1985** and corresponding footnotes [7], [8], & [9], pages 13 & 14 hereof]; and/or "**malice**", which is defined as: "The **intentional** doing of a wrongful act without just cause or excuse, **with an intent to inflict an injury** or under circumstances that the law will imply an evil intent." [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998, emphasis added].) **See also**: **TITLE 18 U.S.C. § 1201. Kidnapping** [supra, page 12 hereof].

[75] **See also**: **K.R.S. 403.763**, i.e., "(1) A person is guilty of **violation of a protective order when he intentionally violates the provisions of an order issued pursuant to KRS 403.715 to 403.785 with which he has been served or has actual notice**. ...(2) Violation of a protective order is a **Class A misdemeanor**."; and **K.R.S. 403.760(5)** [supra, page 30 hereof], i.e., "**Civil proceedings and criminal proceedings are mutually-exclusive. Once either has been initiated, the other may not be undertaken regardless of the outcome of the original proceeding**." (emphasis added)

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80. As well on October 3, 1995, Akers' case resumed before Fayette [Kentucky] District Court Judge Julia Tackett [see "Calender", Exhibit "NN"]. Hereunto relevant portions of that proceeding include, but are not limited to, the following:

> **"PROCEEDING: ...Possible Double Jeopardy... Am: 26,000 F/C property...Bond"**

Akers' mother (Woodsie) then posted the hereinabove "$26,000 Property Bond, Akers was released from custody and, promptly, returned to Nashville, Tennessee, with Harvil. Akers was scheduled to return to Courtroom 3, Fayette District Court on November 10, 1995. [see Court Document/Bail Bond, Exhibit "OO"]

81. On November 6, 1995, Bishop and Fayette (Kentucky) Assistant Commonwealth's Attorney, Lou A. Red

Corn (hereinafter "Red Corn"), went before the Fayette County Grand Jury seeking an indictment of Akers on one (1) count each of "First Degree Stalking and "First Degree Assault". Hereunto relevant portions of the "Transcript" (Exhibit "PP" hereto) of that proceeding include, **but are not limited to**, the following:

Unknown Speaker: Do you swear or affirm that the testimony you are about to give is the truth?

[Bishop]: I do. (Page 33, lines 4 thru 8)

[Bishop]: And so then all of a sudden he jumped up out of the bed and came over to my side, **he grabbed me by the hair of the head** and he pulled me out of the bed, and **he was kicking me, and he was hitting me with his fist in the mouth**. He drug me out in the hall and he was hitting me and kicking me, and **it all**...

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happened so fast I don't know what all happened, but there was a big hole in the wall and evidently he knocked me through the wall. (Page 37, lines 2 through 14, emphasis added)[76]

[Bishop]: I think got about an hour's sleep and I got up the next morning and tried to cover my bruises with makeup **and I went to work the next morning**. (Page 39, lines

13 through 16)[77] (emph. added)

Red Corn: Tell us about your injuries.

[Bishop]: Um, I had -- I had a busted lip, I had bruises on my legs, I wasn't sure of the extent of my injuries. Then a couple of days later I started having pain in my right arm and my neck started bothering me and I wasn't sure what was going on. And I ended up going to the doctor, **Dr. Fulmer** (Page 40, lines 13 through 22) and he **saw my bruises and he said, "I'm going to have to report this**." And --(Page 41, lines 1 through 3)[77]

Red Corn: What did the doctor say was wrong with you?

[Bishop]: He -- he sent me to have a -- a test done at the hospital. An MRI at Central Baptist.

Red Corn: And what did the MRI show? (Page 41, lines 14 through 21)

[Bishop]: The MRI showed that there were two ruptured disks in my neck, **one of them was ruptured into my spinal cord**. And he said it was -- **he said, "What happened, how" -- he said, "Something like this just couldn't happen**." I guess he wanted to know what happened that made me -- my neck had been...

[76] See also: TT#2, J. Preston, 10/27/98, 14:26:50, 14:36:05

[77] Note sharp contrast to Bishop's testimony in hereinabove paragraphs E-32 and E-38.

injured like that. And **when I told him exactly what had happened he said that was the reason, it was from when he had beat me up that night.**[78] (Page 42, lines 1 through 14, emphasis added)

Red Corn: When did you have your surgery?

[Bishop]: We ended up doing the surgery on August 30th.

Red Corn: Now, you got that Emergency Protective Order as a result of the assault, is that right? (Page 45, lines 21 thru 23)

[Bishop]: They – when I went to court then I got the Emergency Protective Order. They gave – they gave him a choice of spending six months in jail or going to Hazelden to an Alcohol Treatment Center. (Page 46, lines 19 thru 24)

Red Corn: During that time, from August until November 1st, did he attempt to contact you?

[Bishop]: From August to November [1994]?

Red Corn: Mm-hm. (affirmatively)

[Bishop]: Um – I don't think so. (Page 47, lines 11 through 19)

Red Corn: Well, what kind of things would he say that frightened you?

[Bishop]: – the biggest thing he said that frightened me the most was he said I'm a – I won't say the words he said, but - uh -

Red Corn: Did he use a lot of profanity? (Page 49, lines 11 thru 21)

[Bishop]: A lot of profanity. And he would say "You haven't seen anything yet." And then he said that – "I'm going to go...

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[78] See hereinabove paragraphs E-35 for **sharply contrasting testimony/view of Dr. Adrian Fulmer**.

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for your throat now," and he called me a name. And that really frightened me. (Page 50, lines 1 through 6)

Red Corn: Now, Carolyn – uh – what – what did you – what came to your mind when he told you he was going to go for your throat?

[Bishop]: As soon as he said that I thought

of a picture of me that used to be on the chest.

Red Corn: Is this the picture that you're talking about? (Page 51, lines 23 & 24)

[Bishop]: Yes.

Red Corn: And where did you find this picture?

[Bishop]: **I found it downstairs in the closet in a paper bag**. (emphasis added)

Red Corn: And I assume the picture was not in this condition when you last saw it.

[Bishop]: No, it wasn't, it was sitting on the chest. And I found it in a paper bag with broken glass in the bag -

[Bishop]: ...**He had broken it and evidently had taken the glass and he had poked out my eyes and it looked like he slit my throat and – and done all that to my picture, and I thought of that picture when he said he was going to go for my throat. It scared me**. (Page 52, lines 1 through 23; & Page 53, lines 1 through 6)[79] (emph. added)

Red Corn: Did these calls continue through November, December, January and

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[79] **Akers had no involvement in any such damage** to said "picture"; Akers has

no knowledge as to how any such damage may have occurred; and said "picture" was in considerably better condition when last seen by Akers and his mother, Woodsie Akers [see TT #3, 10/28/98, 09:23:00, et seq. (first trial), and TT #3, 10/27/98, 17:49:45, et seq. (second trial);] See also: Title 18 U.S.C. §§ 1503 & 1512 (supra, page 9 hereof); K.R.S. 524.100 (id., page 19 hereof); and TT#3, L. Red Corn, 05/22/96, 10:04:15, et seq.

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February? (Page 56, Lines 21 - 23)

[Bishop]: Yes, they did. (Page 57, line 1)

Red Corn: Carolyn, back to your neck injury, how is your neck, how is your neck today?

[Bishop]: No.

Red Corn: Is your mobility or your movement – is it fluid or as easy as it was before he assaulted you?

[Bishop]: No. (Page 59, lines 4 thru 20)

Unknown Speaker: Are you in a great deal of pain?

[Bishop]: Not a great deal, but when it – when it rains or the weather is bad like – then it hurts.[80]

Red Corn: Has Dr. Vaughn and your other physicians done everything they're going to do to fix or cure the problem?

[Bishop]: Yes.

Red Corn: So this is how it's going to be for

the rest of your life?

[Bishop]: Right. Dr. Vaughn gave me some – an anti-inflammatory medicine for pain, but that's all they can do. (Page 60, lines 1 thru 21)

Based solely upon Bishop's and Red Corn's misrepresentations, which were clearly erroneous **and fraudulent** in view of those facts in hereinabove paragraphs E-2, E-8, E-11 through E-14, E-16, E-19 through E-36, E-38 through E-47, E-51 through E-54, ...

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[80] These are **classic symptoms of "arthritis" and are shared by hundreds of millions of persons around the world including Akers and, most likely, even members of this Honorable Court**. See also: TT#1, J. Vaughn, 05/20/00, 13:46:40, et seq.; and TT#1, J. Vaughn, 10/26/98, 16:27:40, 16:37:49, 16:47:30, 16:49:00, 16:50:25, 16:51:15, 16:51:40, & 16:53:00.

E-56 through E-66, & E-68, the Fayette County (Kentucky) Grand Jury returned an indictment against Akers [Exhibit "A" hereto] charging that:

> COUNT 1:
>
> On or about the 4th day of May, 1994, in Fayette County, Kentucky, the above named Defendent assaulted Carolyn Patrick Akers with his hands causing serious physical injury;[81]
>
> COUNT 2:
>
> From November 1994 until August 1995, in Fayette County, Kentucky, the above named defendant committed stalking in the first degree by intentionally stalking Carolyn Patrick Akers when he contacted her for no legitimate purpose, made explicit or implicit threats of serious physical injury or death while said James G. Akers was under a Domestic Violence

Order to have no contact with Carolyn Patrick Akers. (emphasis added)[82]

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[81] See: **TITLE 18 U.S.C. § 1503. Influencing or injuring officer or juror generally** [supra, page 13 hereof], i.e., "(a) Whoever **corruptly...endeavors to influence or impede any grand or petit juror**, or officer in or of any court of the United States, ...**or endeavors to influence, obstruct, or impede, the due administration of justice**, shall be punished as provided in subsection (b)." (emph. added); **TITLE 18 U.S.C. § 1512. Tampering with a witness, victim, or an informant** [id., page 14 hereof], i.e., "(b) Whoever knowingly uses **intimidation...or corruptly pursuades** another person, **or attempts to do so**, or engages in misleading conduct toward another person, **with intent** to-- (1) **influence**, delay, **or prevent the testimony of any person** in an official proceeding; (2) **cause or induce any person to**-- (A) withhold testimony, or withhold a record, document, or other object from an official proceeding; (B) **alter**, destroy, **mutilate**, or conceal **an object with intent to impair the object's integrity** or availability in an official proceeding; shall be fined under this title or imprisoned not more than ten years, or both." (emph. added); **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights**: [id., page 16 hereof], i.e., "**Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to**..." (continued, page 103 hereof)

[82] See: **TITLE 18 U.S.C. § 1503. Influencing or injuring officer or juror generally** [supra, page 13 hereof], i.e., "(a) Whoever **corruptly...endeavors to influence or impede any grand or petit juror**, or officer in or of any court of the United States, ...**or endeavors to influence, obstruct, or impede, the due administration of justice**, shall be punished as provided in subsection (b)." (emph. added); **TITLE 18 U.S.C. § 1512. Tampering with a witness, victim, or an informant** [id., page 14 hereof], i.e., "(b) Whoever knowingly uses **intimidation...or corruptly**..." (continued, page 104 hereof)

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[81] **TITLE 42 U.S.C. § 1983** (continued from page 102 hereof): "...**be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" (emphasis added); **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights** [id.] (2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice**

in any State or Territory, with the intent to deprive any citizen...equal protection of the laws, or to injure him or his property for lawfully enforcing, or **attempting to enforce,** the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy,** whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators." (emphasis added). See also: **Ky Const § 13**: [supra, page 27 hereof], i.e, "**No person shall,** for the same offense, **be twice put in jeopardy** of his life and limb..." (emphasis added) and corresponding footnote [26] thereto, i.e., "**Fifth Amendment, U. S. Constitution** [supra, page 6 hereof]; **Sherley v. Commonwealth, 558 SW(2d) 615 (Ky 1977),** i.e., "Where Commonwealth used the **same evidence** of force causing serious physical injury to elevate offense..., defendant was placed in double jeopardy by conviction of first degree assault on the basis of the same physical injury; ...K.R.S. 505.020, 506.010(4)(a), 508.101(1)(a), 510.040(1)(b), (2)" (emphasis added); **Crawley v. Kunzman, 585 SW(2d) 387 (Ky 1979),** i.e., "[R]ight of appeal is not [an] adequate remedy against double jeopardy. U.S.C.A. Const. Amend. 5" (emph. added); and **Klee v. Lair, 621 SW(2d) 892, (Ky 1981),** i.e., "[D]efendant's having been found guilty of **lesser included offense**...would **prohibit** him from being tried a second time for major offense." (emph. added); **Ky Const § 26** [supra, page 28 hereof], i.e., "To guard against transgression of the high powers we have delegated, We Declare that **every thing in this bill of rights is excepted out of the general powers of government and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void**" (emphasis added) and corresponding footnote [30] thereto, i.e., "**These very same concerns, and safeguards against them,** were addressed by United States Supreme Court Justices Douglas & Marshall in landmark decision **North Carolina v. Pearce, 89 S.Ct. 2089 (1969)** [supra, page 6 hereof]. See also: **801 SW(2d) 321 (Ky 1990), Ingram v Commonwealth,** i.e., '**The Kentucky Constitution is superordinate to legislative intent...**'" (emphasis added); **K.R.S. 403.7505 (2)** [supra, page 30 hereof], i.e, "(a) '**Domestic violence**' is a pattern of coercive control which **includes physical,** sexual, psychological, and environmental **abuse, and is considered criminal conduct**" (emphasis added) in conjunction with hereinabove paragraphs E-31(tt), (uu), & (vv) through E-42, and corresponding footnotes [50], [51], [53], & [54] thereto. **Notwithstanding, see: K.R.S. 500.050 Time limitations**: [supra, page 31 hereof], i.e., "(2) Except as otherwise specifically provided, the..." (continued, page 104 hereof)

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[81] **K.R.S. 500.050 Time limitations** (continued from page 103 hereof): "... **prosecution of an offense other than a felony must be commenced within one year after it is committed**" (emph. added) in conjunction with **K.R.S. 508.030**

Assault in the fourth degree: [id., page 35 hereof], i.e., "(1) A person is guilty of assault in the fourth degree when: (a) He **intentionally or wantonly causes physical injury** to another person; **or (b) With recklessness he causes physical injury** to another person **by means of a deadly weapon or a dangerous instrument**. (2) Assault in the fourth degree is a **Class A misdemeanor**" (emphasis added) and K.R.S. **508.040 Assault under extreme emotional disturbance**: [id.], i.e., "(1) In any prosecution under KRS 508.010, 508.020, or 508.030, in which intentionally causing physical injury or serious physical injury is an element of the offense, a defendant may establish in mitigation that he acted under the influence of extreme emotional disturbance, as defined in subsection (1)(a) of KRS 507.020. (2) An assault committed under influence of extreme emotional disturbance is: (b) A Class B misdemeanor when it would constitute an assault in the fourth degree if not committed under the influence of extreme emotional disturbance" and hereinabove paragraphs E-31 (tt), (uu), & (vv) through E-42, and corresponding footnotes [50], [51], [53], & [54] thereto and footnote [7] [supra, page 13 hereof], i.e., "**Fraud**" defined: "A **false representation of a matter of fact**, whether by words or by conduct, **by false or misleading allegations, or by concealment of that which should have been disclosed**, which deceives and is intended to deceive another so that he shall act upon it to his legal injury; A generic term, embracing all multifarious means which human ingenuity can devise, ...to get advantage over another by false suggestions or **by suppression of the truth**...; As distinguished from negligence, **it is always positive, intentional**. It comprises **all acts, omissions, and concealments** involving a breach of a legal **or equitable duty and resulting in damage to another**. And includes **anything calculated to deceive**, whether it be a single act **or combination of circumstances**, whether the **suppression of truth or the suggestion of what is false**, whether it be direct falsehood or by innuendo, by speach or **by silence**, by word of mouth, **or by look or gesture**." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]

[82] **TITLE 18 U.S.C. § 1512** (continued from page 102 hereof): "...**persuades** another person, **or attempts to do so**, or engages in misleading conduct toward another person, **with intent** to-- (1) **influence**, delay, **or prevent the testimony of any person** in an official proceeding; (2) **cause or induce any person to**-- (A) withhold testimony, or withhold a record, document, or other object from an official proceeding; (B) **alter**, destroy, **mutilate**, or conceal **an object with intent to impair the object's integrity** or availability in an official proceeding; shall be fined under this title or imprisoned not more than ten years, or both." (emph. added); **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights**: [id., page 16 hereof], i.e., "**Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" (emphasis added); **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights** [id.] "(2) If **two or more**..." (continued, page 105 hereof)

82. As well, on November 6, 1995, a "True Bill" was signed by the Grand Jury Foreperson [See Exhibit "A" hereto] charging Akers with: "COUNT 1: ASSAULT FIRST DEGREE KRS 508.010; UOR 13013 CLASS B FELONY"; and COUNT 2: STALKING FIRST DEGREE KRS 508.140; UOR 13242 CLASS D FELONY"; the same was "Filed and Entered" by the Fayette Circuit Court Clerk; bail was set for $7,500 full cash [CP#1, R. Overstreet, 11/10/95, 13:09:28, et seq.]; and the case was set for arraignment on November 10, 1995, before Fayette Circuit Judge Rebecca M. Overstreet...

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[82] **TITLE 42 U.S.C. § 1985** (continued from page 104 hereof): "... **persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws**, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators." (emphasis added). **See also**: Hereinabove paragraphs E-51, E-52, E-54 thru E-58, E-60 through E-68, & E-72 through E-80 and corresponding footnotes [7] [63] [65] [66] [67] [68] [69] [70] [71] [72] [73] & [74] thereto and footnote [7] [supra, page 13 hereof], i.e., **"Fraud" defined**: "A **false representation of a matter of fact**, whether by words or by conduct, **by false or misleading allegations, or by concealment of that which should have been disclosed**, which deceives and is intended to deceive another so that he shall act upon it to his legal injury; ...A generic term, embracing all multifarious means which human ingenuity can devise, ...to get advantage over another by false suggestions or **by suppression of the truth**...; As distinguished from negligence, **it is always positive, intentional**. It comprises **all acts, omissions, and concealments** involving a breach of a legal **or equitable duty and resulting in damage to another**. And includes **anything calculated to deceive**, whether it be a single act **or combination of circumstances**, whether the **suppression of truth or the suggestion of what is false**, whether it be direct falsehood or by

innuendo, by speech or by silence, by word of mouth, or by look or gesture." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]

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(hereinafter "Overstreet"), **who was and remains a long-standing and powerful member of the same church ("SCC") where Bishop is a high-profile member of the church choir**. It is, as well, worthy of note that Overstreet previously boasted (to great applause) to a Lexington area league of women voters to the effect that: "**Before I retire, I will have sentenced men to over one million years in the State Penitentiary**".[83]

83. On November 10, 1995, Akers appeared at the Fayette (Kentucky) Circuit Court for arraignment on the indicted charges and Overstreet **capriciously increased Akers' bail to a $52,000 Property Bond** [see Exhibit "QQ" hereto and CP#1, C. Perkins/R. Overstreet, 11/10/95, 13:13:50, et seq.];[84] Akers entered a plea of "not guilty"; posted the additional bail; and then promptly returned to Nashville, Tennessee, pending further hearings.

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[83] See also: Lexington Herald/Leader newspaper articles [Collective Exhibit "RR" hereto] and Bishop's "Letter to the Editor" [Exhibit "SS" hereto] on behalf of Overstreet's re-election in November of 1999.

[84] See: **U.S. Const. Amend. 5** [supra, page 7 hereof], i.e., "No person shall ...be **deprived of...liberty**, or property, **without due process of law**" (emph. added); **U.S. Const. Amend 8** [id., page 10 hereof], i.e., "**Excessive bail** shall not be required..." (emphasis added); **U.S. Const. Amend. 14** [id.], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside. No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws**" (emphasis added); **Ky Const § 2. Absolute and arbitrary power denied** [supra, page 26 hereof], i.e., "**Absolute and arbitrary power over** the lives, liberty and property of **freemen exists nowehere in a republic, not even in the largest majority**" (emph. added); **Ky Const § 17. Excessive bail or fine, or cruel punishment, prohibited** [id., page 27 hereof], i.e., "**Excessive bail shall not be required...**" (emphasis added); **Kentucky Criminal Practice § 11.09 Modification or revocation of bail**, i.e., "In

Marcum v Broughton, the Court held that after bond..." (continued, page 104 hereof)

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84. On January 3, 1996, Red Corn filed her "Notice of Evidence Pursuant to KRE 404 (b)" which listed alleged specific incidents **and even broad categories of alleged misconduct of/by Akers spanning the entire twenty-six year marriage of Akers and Bishop** [Exhibit "TT" hereto]. Therein items 2.a.(1), (2), (3), (6), (7), (8), and (9) were **completely and unequivocally false; were disputed by even Bishop's own sons**, Wayne and Alan; were **unsupported by any corroborative or supportive evidence**; and, even had they been true, would have been **completely irrelevant to Akers' indicted charges of "First Degree Assault" and "First Degree Stalking"**. Items 2.a.(4),(5), and 3., while containing "elements" of truth, amounted to **gross exaggerations and were, likewise, irrelevent and/or prejudicial if not fraudulent for the purposes intended and used by Bishop and Red Corn.**

85. From January 3, 1996, until and including Akers' first trial on May 20 through 22, 1996, Overstreet "**OVERRULED**" **every single motion filed by Akers' attorneys,** and essentially **ignored** properly raised issues with respect to evidence as to alleged "prior/other bad acts" falling within the limitations of K.R.E. 404(b) [see Exhibit "UU" hereto and hereinafter paragraph 96]

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[84] **Kentucky Criminal Practice § 11.09** (continued from page 103 hereof): "...has been set by the court, the bond may not be increased or revoked without a change in the defendant's status. The Court stated that **increasing the bond without any reason would be an arbitrary action in violation of § 2 of the Constitution of Kentucky**" (emph. added); and **Ky Const § 26** [supra, page 28 hereof], i.e., "To guard against transgression of the high powers we have delegated, We Declare that **every thing in this bill of rights is excepted out of the general powers of government and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void**" (emphasis added).

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86. On May 20, 1996, Akers' trial was commenced in the hereinabove Court. **Some of the "irregularities"** of that trial include, **but are not limited to**, the following:

I. Pre-trial Matters: (a) Pursuant to the Akers' son, Wayne, having expressed his dismay of Bishop's hereinabove acts and/or schemes, Red Corn attempted to influence and/or obstruct the anticipated testimony of A. Wayne Akers by telephoning him during the week of May 10, 1994, and making a statement to the effect that: "**[h]ow dare you talk to your mother like that!**"[85]

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[85] See: **TITLE 18 U.S.C. § 1512. Tampering with a witness, victim, or an informant** [supra, page 14 hereof], i.e., "(b) Whoever knowingly uses **intimidation...or corruptly persuades** another person, **or attempts to do so**, or engages in misleading conduct toward another person, **with intent** to– (1) **influence**, delay, **or prevent the testimony of any person** in an official proceeding; (2) **cause or induce any person to**– (A) withhold testimony...from an official proceeding; ...shall be fined under this title or imprisoned not more than ten years, or both" (emphasis added); **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights** [id., page 16 hereof], i.e., "**Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" (emphasis added); **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights**: [id.], i.e., "(2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws**, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators" (emphasis added).

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II. Jury Selection Phase: (a) Five jurors came forward and admitted that they, or someone closely associated with them, had been the "victim" of "domestic violence or abuse" and the court refused to excuse those jurors. (b) Red Corn "pre-prejudiced" the jurors by, ***inter alia***, (i) erroneously and intentionally misleading them as to the essential elements of "Assault in the First Degree" [TT#1, L. Red Corn, 05/20/96, 09:57:10 & 09:59:45]; and (ii) erroneously instructed the jurors with respect to the essential elements of "Stalking in the First Degree" [TT#1, L. Red Corn, 05/20/96, 11:00:30].

III. Jury Voir Dire Phase: (a) Sanctioned by Overstreet, Red Corn "tampered with the jur[ors]"[86] by instructing them to the effect that: "If any of you believe that the courts should not get involved in marital relationships, then please excuse yourselves now." [TT#1, L. Red Corn, 05/20/96, 11:01:00]

IV. OPENING ARGUMENTS: (a) Red Corn intentionally misled and/or and/or "tampered with [and/or confused] the jury"[86] with respect to the charges for which Akers was on trial, i.e., "First Degree Assault" (for discrete acts on, or about May 4, 1994), and "First Degree Stalking" (for an alleged course of conduct from...

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[86] See: **"Tampering with jury"**: "...The act of attempting to influence a juror corruptly by...persuasions, entreaties, ...or **any other means except the production of evidence in open court**. *See e.g.* 18 U.S.C.A § 1503, 1504." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988 (emphasis added)]. See also: **"Tamper"** (footnote 9 hereof): "To meddle so as to alter a thing, especially to make illegal, **corrupting or perverting changes**" [id.].

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November of 1994 until August of 1995), by propounding alleged acts spanning the entire twenty-six year marriage of

Akers and Bishop and, even if those allegations had been true, such would have had no relevance whatsoever to Akers' indicted charges.

V. PROSECUTION'S CASE-IN-CHIEF: (a) Red Corn (with assistance and sanction of Overstreet) successfully deployed numerous "evidentiary harpoons" of erroneous, derogatory, irrelevant and inadmissible testimony not included in her "Notice pursuant to K.R.E. 404(b)" [Exhibit "TT" hereto] including, **but not limited to** insinuations that Akers burned down a home he was building in 1988[87] [TT#1, 05/20/96, C. Patrick, 17:36:35 et seq. & 19:07:40]; (b) Red Corn introduced into evidence, and played for the jury, audio-taped testimony of Akers at that hearing/trial in herein-

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[87] See: Paragraph 18, Page 5, Exhibit "B" hereto; Paragraph 5, Page 2, Exhibit "D" hereto; Paragraph 7, Page 2, Exhibit "E" hereto; **K.R.E. 103. RULINGS ON EVIDENCE** [supra, page 38 hereof], i.e., "**(c) Hearing of Jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.**" (emphasis added); **K.R.E. 107. MISCELLANEOUS PROVISIONS** [id., page 39 hereof] "**(b) Effective date**: The Kentucky Rules of Evidence shall take effect on the first day of July, 1992. **They shall apply to all** civil and **criminal actions and proceedings** originally brought on for trial after that date and to pretrial motions or matters originally presented to the court for decision upon or after that date if a determination of such motions or matters requires application of evidence principles; provided, however, that **no evidence shall be admitted against a criminal defendant in proof of a crime committed prior to July 1, 1992**, unless that evidence would have been admissible under evidence principle in existence prior to adoption of these rules." (emphasis added); **K.R.E. 404. CHARACTER EVIDENCE AND EVIDENCE OF OTHER CRIMES**: [id., page 40 hereof], i.e., "**(a) Character Evidence Generally**: Evidence of a persons character is **not admissible** for the purpose of proving action in conformity therewith on a particular occasion, except: (1) *Character of accused*: Evidence of a pertinent trait of character or of the..." (continued, page 111 hereof)

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above paragraph E-38 and which was clearly inadmissible pursuant to **K.R.S. 403.780** [supra, page 31 hereof], i.e.,

"**Testimony not admissible in criminal proceeding: Testimony offered by an adverse party** in a hearing held pursuant to the provisions of [KRS] 403.745 **shall not be admissible in any criminal proceeding involving the same parties**" (emphasis added) [see TT#1, L. Red Corn, 05/20/00, 11:41:57]. (c) Bishop, under the encouragement, guidance, and sanction of Red Corn and Overstreet, respectively, fraudulently[88] testified with respect to matters including, **but not limited to**: (i) facts with respect to hereinabove paragraph E-31, to the effect that Akers had "pulled [her] out of the bed by the hair of [her] head and drug [her] out in the hallway",

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[87] **K.R.E. 404** (continued from page 110 hereof): "... general moral character **offered by the accused**...; (2) *Character of Victim Generally*: Evidence of a pertinent trait of character of the victim of the crime **offered by the accused**...; **(b) Other Crimes, Wrongs, or Acts**. Evidence of other crimes, wrongs, or acts **is not admissible** to prove the character of a person in order to show action in conformity therewith. ...**(c) Notice Requirement**. In a criminal case, if the prosecution intends to introduce evidence pursuant to subdivision (b) of this rule as a part of its case in chief, it **shall give reasonable pretrial notice to the defendant** of its **intention** to offer such evidence. **Upon failure of the prosecution to give such notice the court may** exclude the evidence offered under subdivision (b) or for cause shown may excuse the failure to give such notice and **grant the defendant a continuance or such other remedy as necessary to avoid unfair prejudice caused by such failure**." (emphasis added)

[88] See: "'Fraud' defined" [footnote [7], page 13 hereof], i.e., "A generic term, embracing all multifarious means which human ingenuity can devise, ...**to get advantage over another by false suggestions** or by suppression of the truth...; It comprises **all acts, omissions, and concealments involving a breach of a legal or equitable duty and resulting in damage to another**. And includes **anything calculated to deceive**, whether it be a single act **or combination of circumstances**, whether the suppression of truth or the **suggestion of what is false, whether it be direct falsehood or by innuendo**, by speech or **by silence**, by word of mouth, **or by look or gesture**." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]. See also: **"Tampering with jury"** [footnote [8], id.]: "The act of..." (continued, page 112 hereof)

and "struck her "repeatedly in the face with his fist"; (ii) allegations that Akers had continued to contact her and threaten her during the summer of 1994 **after the effective date of the "Domestic Violence Order" in hereinabove paragraph E-38** [TT#1, C. Patrick, 05/20/96, 16:28:30 et seq.]; (iii) denied that she had ever experienced problems with her neck and/or back prior to May 4, 1994 [TT#1, 05/20/96, C. Patrick, 16:36:00, et seq.]; (iv) introduced into evidence and **showed to the a jury retouched**...

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[88] **"Tampering with jury"** (continued from page 111 hereof): "...attempting to influence a juror corruptly by...persuasions, entreaties, ...or **any other means** except the production of evidence in open court. *See e.g.* 18 U.S.C.A § 1503, 1504." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]; **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights**: [supra, page 16 hereof], i.e., "(2) If **two or more persons in any State** or Territory or the District of Columbia **conspire to ...influence the verdict**, presentment, or indictment **of any** grand or **petit jury...**, **or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws**, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of **any person**...to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators" (emphasis added); **K.R.S. 523.020 Perjury in the first degree** [supra, page 38 hereof], i.e., "(1) A person is guilty of perjury in the first degree when he makes a material false statement, which he does not believe, in any official proceeding under oath required or authorized by law; (3) Perjury in the first degree is a Class D felony." (emphasis added); and/or **K.R.S. 523.050. Inconsistent statements** [id.], i.e., "(1) When a person has made **inconsistent statements under oath**, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single charge alleging in the alternative that **one or the other was not believed** by the defendant. In such case **it shall not be necessary** for the prosecution **to prove which statement was false but only that one or the other was false** and not believed by the defendant to be true." (emphasis added).

photograph fraudulently depicting an injury to Bishop from an incident which occurred on August 10, 1989 [TT#1, 05/20/96, C. Patrick, 17:32:15 et seq.]; and (v) introduced into evidence and **showed the jury a photograph of Bishop (taken in 1969 and damaged thereafter by someone other that Akers)** which Bishop alleged was the basis of her fear of Akers' during the time of the alleged "stalking" [see TT#1, 05/20/96, C. Patrick, 16:56:15 et seq.][89]; (d) Fleming, under the encouragement, guidance, and/or sanction of Bishop, Red Corn, and Overstreet, respectively, fraudulently[88] testified with respect to matters including, **but not limited to**: (i) the demeanor and/or physical condition of Bishop on the morning of May 5, 1994; (ii) Bishop's "fainting" soon thereafter as the result of the events of May 4/5, 1994 (see hereinabove paragraph E-15(c)); and (iii) that there was a "big hole in the wall" at the Akers' home as the purported result of Akers' "throwing [Bishop] through [same]" on May 4/

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[89] See: **TITLE 18 U.S.C. § 2. Principals** [supra, page 11 hereof], i.e., "(a) Whoever **commits** an offense against the United States or **aids, abets, counsels,** commands, **induces, or procures** its commission, **is punishable as a principal.** (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." (emph. added); **TITLE 18 U.S.C. § 3. Accessory after the fact** [id.], i.e., "Whoever, knowing that an offense against the United States has been committed, **receives, relieves,** comforts **or assists** the offender in order to hinder or prevent his apprehension, trial or punishment, **is an accessory after the fact.**" (emphasis added); **TITLE 18 U.S.C. § 1503. Influencing or injuring officer or juror generally** [id., page 13 hereof], i.e., "(a) Whoever **corruptly...endeavors to influence or impede any grand or petit juror,** or officer in or of any court of the United States, ...**or endeavors to influence, obstruct, or impede, the due administration of justice,** shall be punished as provided in subsection (b)." (emphasis added); **TITLE 18 U.S.C. § 1512. Tampering with a witness, victim, or an informant**: [id., page 14 hereof], i.e., "(b) Whoever knowingly uses **intimidation...or corruptly pursuades** another person, ..." (continued, page 114 hereof)

5, 1994.[89] (e) Rushing, under the encouragement, guidance, and/or sanction of Bishop, Red Corn, and Overstreet, respectively, fraudulently[88] testified with respect to matters

including, **but not limited to**: (i) testimony that he had never seen Akers prior to July, 1994; (ii) that Rushing had received in excess of "fifty [tele]phone calls from Akers during the months of May, June, July, and August of 1994 [see TT#1, A. Rushing, 05/20/96, 14:36:30]; and (iii) that Rushing had never discussed with Bishop that she might be "fired unless she [got] her personal life in order".[89]

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[89] **TITLE 18 U.S.C. § 1503** (continued from page 113 hereof): "... **or attempts to do so**, or engages in misleading conduct toward another person, **with intent to**– (1) **influence**, delay, **or prevent the testimony of any person** in an official proceeding; (2) **cause or induce any person to**– (B) **alter**, destroy, **mutilate**, or conceal **an object with intent to impair the object's integrity** or availability in an official proceeding; shall be fined under this title or imprisoned not more than ten years, or both." (emphasis added); **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights** [id., page 16 hereof], i.e., "**Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" (emphasis added); and **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights**: [id.], i.e., "(2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws**, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators" (emphasis added).

VI. DEFENSE PHASE: (a) Overstreet & Red Corn conspired to, and **effectively barred** the testimony of eyewitness, Alan P.

Akers, with respect to evidence **clearly admissible under K.R.E. 803** [see TT#2, A. Akers, 05/21/96, 11:36:55 et seq.] despite having already allowed similar and **far less admissible testimony** of certain preceding prosecution witnesses. (b) Red Corn, under the misinformation of Bishop, and sanction and encouragement of Overstreet, intentionally confused the jury with respect to the charges for which Akers was on trial and, thereby, "tampered with the jury" by making competely fraudulent insinuations that: (i) **at some point in his life**, Akers had threatened his father with a knife; (ii) thrown a flashlight **at someone**; and (iii) **in some manner**, **had something** to do with the breaking of Akers' mother's arm [TT#2, W. E. Akers/L. Red Corn, 05/21/96, 14:27:40, et seq.].[90] (c) Overstreet and Red Corn would not allow the testimony of Akers' fiance', Deborah L. Harvil, with respect to Akers' emotional state during period of time period of alleged "stalking".[91] [TT#3, D. Harvil, 05/21/96, 15:47:45]

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[90] See: "Fraud" defined: "A **false representation of a matter of fact**, whether by words or by conduct, **by false or misleading allegations**...""A generic term, embracing all multifarious means which human ingenuity can devise, ...to get advantage over another **by false suggestions** or by suppression of the truth...; As distinguished from negligence, **it is always positive, intentional**. It comprises **all acts, omissions, and concealments** involving a breach of a legal **or equitable**..." (continued, page 116 hereof)

[91] **K.R.E. 401. DEFINITION OF "RELEVANT EVIDENCE"**: [supra, page 40 hereof], i.e., "**Relevant evidence**" means evidence having **any tendency** to make the existence of **any fact that is of consequence to the determination of the action more probable or less probable** than it would be without the evidence." (emph. added); **K.R.E. 402** [id.], i.e., "**All relevant evidence is admissible**, except as otherwise provided by..." (continued, page 117 hereof)

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[90] "Fraud" defined (continued from page 115 hereof): "...**duty and resulting in damage to another**. And includes **anything calculated to deceive**, whether it be a single act **or combination of circumstances**, whether the suppression of truth **or the suggestion of what is false**, whether it be **direct falsehood or by inuendo**, by speach or by silence, **by word of mouth, or by look or gesture**.

[Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]. See also: **TITLE 18 U.S.C. § 1503** [supra, page 13 hereof], i.e., "**Influencing or injuring officer or juror generally**: (a) Whoever **corruptly endeavors to influence or impede any grand or petit juror**, or officer in or of any court of the United States, ...**or endeavors to influence, obstruct, or impede, the due administration of justice**, shall be punished as provided in subsection (b)." (emphasis added); **TITLE 18 U.S.C. § 1961** [id., page 14 hereof], i.e., "**Definitions**: (1) "racketeering activity" means (B) any act which is indict-able under any of the following provisions of title 18, United States Code: ...**section 1503** (relating to obstruction of justice); et seq." (emph. added); **TITLE 42 U.S.C. § 1985** [id., page 16 hereof], i.e., "**Conspiracy to interfere with civil rights**: (2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen ...equal protection of the laws**, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, mr class of persons, to the equal protection of the laws; (3)...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators." (emphasis added); **K.R.E. 103. RULINGS ON EVIDENCE** [supra, page 39 hereof], i.e., "(c) **Hearing of Jury. In jury cases, proceedings shall be conducted**, to the extent practicable, **so as to prevent inadmissible evidence from being suggested to the jury** by any means, such as making statements or offers of proof or asking questions in the hearing of the jury." (emph. added); **K.R.E. 404. CHARACTER EVIDENCE AND EVIDENCE OF OTHER CRIMES**: "**(a) Character Evidence Generally** [id., page 40 hereof], i.e., **Evidence of a persons character is not admissible** for the purpose of proving action in conformity therewith on a particular occasion, **except**: (1) *Character of accused*: Evidence of a pertinent trait of character or of the general moral character **offered by the accused**...; **(b) Other Crimes, Wrongs, or Acts**. Evidence of other crimes, wrongs, or acts **is not admissible** to prove the character of a person in order to show action in conformity therewith. ...**(c) Notice Requirement**. In a criminal case, if the prosecution intends to introduce evidence pursuant to subdi-vision (b) of this rule as a part of its case in chief, **it shall give reasonable pretrial notice to the defendant** of its **intention** to offer such evidence. **Upon failure of the prosecution to give such notice the court may** exclude the evidence offered under subdivision (b) or for cause shown may excuse the failure to give such notice and **grant the defendant a continuance or such other remedy as necessary to avoid**..." (continued, page 118 hereof)

[91] (continued from page 115 hereof): "...the Constitution of the United States and the Commonwealth of Kentucky, by the acts of the General Assembly of the Commonwealth of Kentucky, by these rules, or by other rules adopted by the Supreme Court of Kentucky." (emphasis added); **K.R.E. 405. METHODS OF PROVING CHARACTER** [id.], i.e., "**(a) Reputation or opinion.** In all cases in which evidence or a trait of character of a person is admissible, proof **may be made** by testimony as to general reputation in the community or by testimony **in the form of opinion. (c) Specific Instances of Conduct.** In cases in which character of a personis an [asserted] element of a charge, claim, or defense, **proof may also be made of specific incidents in that person's conduct**." (emph. added). **See also**: Hereinabove footnote [89] i.e., **"Fraud" defined**: "A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations..." "A generic term, embracing all multifarious means which human ingenuity can devise, ...to get advantage over another by false suggestions or by **suppression of the truth**...; As distinguished from negligence, **it is always positive, intentional**. It comprises **all acts, omissions, and concealments** involving a breach of a legal **or equitable duty and resulting in damage to another**. And includes **anything calculated to deceive**, whether it be a single act **or combination of circumstances, whether the suppression of truth** or the suggestion of what is false, whether it be direct falsehood or by innuendo, by speech or by silence, by word of mouth, or by look or gesture. [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]; **TITLE 18 U.S.C. § 1503** [supra, page 13 hereof], i.e., "**Influencing or injuring officer or juror generally**: (a) Whoever **corruptly...endeavors to influence or impede any grand or petit juror**, or officer in or of any court of the United States, ...**or endeavors to influence, obstruct, or impede, the due administration of justice**, shall be punished as provided in subsection (b)." (emphasis added);

TITLE 18 U.S.C. § 1961 [id., page 14 hereof], i.e., "**Definitions**: (1) "racketeering activity" means (B) any act which is indictable under any of the following provisions of title 18, United States Code: ...**section 1503** (relating to obstruction of justice); et seq." (emphasis added); **TITLE 42 U.S.C. § 1985** [id., page 16 hereof], i.e., "**Conspiracy to interfere with civil rights**: (2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws**, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators." (emphasis added); **K.R.E. 1101. APPLICABILITY OF RULES** [id.], i.e., "**(a) Courts**. These rules apply to

all the courts of this Commonwealth in the actions, cases, and proceedings and to the extent hereinafter set forth. ...**(c) Rules on Privileges**. The rules with respect to **privileges apply at all**..." (continued, page 118 hereof)

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VII. CLOSING ARGUMENTS: (a) In her "closing arguments", Red Corn further inflamed the jury by **emotionally asserting** that: **"[Akers] could have driven up that interstate and killed someone!"**[91]

VIII. INSTRUCTIONS TO JURY: (a) Overstreet knowingly, and intentionally, "tampered with the jury" by providing them with erroneous and misleading "definitions" with respect to, ***inter alia***, "dangerous instrument", "wantonly", & "recklessly" [TT#3,

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[90] **K.R.E. 404** (continued from page 116 hereof): "...**unfair prejudice caused by such failure**." (emph. added); **K.R.E. 602. LACK OF PERSONAL KNOWLEGE** [id., page 41 hereof], i.e., "A witness may not testify to a matter unless evidence is introduced to support a finding that the witness has **personal knowlege** of the matter." (emphasis added); **K.R.E. 1101. APPLICABILITY OF RULES** [id.], i.e., "**(a) Courts**. These rules apply to **all the courts of this Commonwealth in the actions, cases, and proceedings** and to the extent hereinafter set forth. ...**(c) Rules on Privileges**. The rules with respect to **privileges apply at all stages of all actions, cases, and proceedings**." (emphasis added); **in conjunction with U.S. Const. Amend. 5** [supra, page 7 hereof], i.e, "No person shall...**be deprived of...liberty**, or property, **without due process of law.**" (emphasis added); **and U.S. Const. Amend. 14** [id., page 10 hereof], i.e., "**No State** shall...deprive **any person of life, liberty, or property, without due process of law** (emphasis added)

[91] (continued from page 118 hereof): "...**stages of all actions, cases, and proceedings**." (emphasis added); **in conjunction with U.S. Const. Amend. 5** [supra, page 7 hereof], i.e, "No person shall...**be deprived of...liberty**, or property, **without due process of law.**" (emphasis added); **and U.S. Const. Amend. 14** [id., page 10 hereof], i.e., "**No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws**." (emphasis added)

[92] There can be no question that America's "criminal law" was intended to be

"punitive" or, in some cases, "injunctive" but that it was **never intended** to be "speculative" or "inflammatory". Moreover, there are **in excess of four million persons in the State of Tennessee** and, in view of those facts within hereinabove paragraphs E-31 through E-34, E-36 through E-47, E-50, & E-56 through E-63, **all such persons would have been more likely** to "have driven up that interstate and killed someone" than Akers was inclined to.

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R. Overstreet, 05/21/96, 09:12:45, et seq.; **See also**, TT#3, L. Red Corn, 05/22/96, 10:06:30, et seq.]; and (b) Red Corn and Overstreet refused to allow a jury instruction with respect to "E.E.D." (Extreme Emotional Disturbance) as a mitigating factor for Akers' alleged "Assault" or "Stalking" of Bishop.[93]

IX. JURY DELIBERATION PHASE: (a) On the final day of Akers' trial, and just prior to going into deliberations, a juror was seen with that day's issue of the Lexington Herald/Leader, which contained a "front page" report **graphically depicting** events of the previous day, wherein a Lexington woman was murdered by her boy-friend following a "domestic fight". [Exhibit "VV" hereto; **see also**: Item 4, Exhibit "F" hereto; and TT#3, L. Red Corn, 05/22/96, 10:16:00, et seq.]

87. On May 22, 1996, Akers was convicted in the Fayette Circuit Court on one (1) count each of "First Degree Assault" and "First Degree Stalking", as indicted, and the jury then recommended sentences of ten (10) years and five (5) years, respectively, to be served consecutively, for a total sentence of fifteen (15) years imprisonment [see Exhibit "WW" hereto].

88. Upon Akers' convictions resulting from hereinabove paragraphs E-31, E-32, E-35, E-36, E-38, E-40 thru E-42, E-48, ...

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[93] See: "Due process of law" defined [footnote [5], page 8 hereof], i.e., "...**The concept of 'due process of law' as it is embodied in the Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious**..." U.S. v. Smith, D.C. Iowa, 249 F.Supp. 515, 516.; and "...**the verdict must be supported by the evidence presented.**" [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998 (emphasis added)]

E-51, E-54, E-56 thru E-68, E-70 thru E-79, & E- 81 thru E-87, Red Corn commented to Akers' defense attorney and previous civil attorneys about Akers to the effect that: "**That son of a bitch! I'd have gotten him life if I could have!**"

89. On June 21, 1996, Akers appeared before Overstreet for "Final Sentencing"; Akers' timely-filed "Motion for New Trial and Motion for Judgement Notwithstanding the Verdict" [see Exhibit "XX" hereto], "Motion for Shock Probation", and "Motion to Reinstate the Pre-trial Bond" of Akers were "**OVERRULED**"; and despite numerous mitigating letters having been filed with the Court [see collective Exhibit "YY" hereto and Overstreet's acklnowledgement thereof (CP#1, 06/21/96, R. Overstreet, 06/21/96, 14:52:02, et seq.)], Overstreet made the following statement: "**...I know that by putting you in the penetintiary, I can protect your ex-wife, your current girlfriend[94] or any other female that in the future you may come in contact with.**"

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[94] It is clear that Overstreet does not understand, or refuses to accept, the limits of her jurisdiction. **Not only has she usurped Akers' rights under the constitutions of the United States of America and the State of Tennessee [or the jurisdiction of the State of Tennessee** with respect to acts committed **within the State of Tennessee** and were, **at worst**, a misdemeanor under Tennessee law (see T.C.A. 39-117-308, supra, page 21 hereof)], she now is attempting to confer jurisdiction over all the constitutional rights of **Harvil**, a **citizen** and resident **of the United States of America and the State of Tennessee** therein, **and would not even be within the state of Kentucky** but for exercising of her rights as **secured by the United States Constitution**. Overstreet further asserted that: "...due to [Akers'] emotional and mental condition, ...**alcoholism, [and]...the violent...and deliberate nature of [Akers'] crime...**, [that] the Court is of the opinion that imprisonment is necessary for the protection of the public because there is a substantial risk that [Akers] will commit another crime during any period of conditional discharge..." [Exhibit "ZZ", page 2, lines 4 through 14]. **See also** (in reality): Exhibits "B" through "K", "T", "V", [collective Exhibit] "YY", & "TTT" hereto.

Overstreet then imposed her "Final Judgement [&] Sentence of Imprisonment" "at hard labor."[95] [see Exhibit "ZZ" hereto, and which was actually signed by (Chief Fayette) Circuit Judge Mary C. Noble on June 27, 1996, in Overstreet's absence]

90. On November 5, 1996, Akers' attorney on appeal, David A. Tapp (hereinafter "Tapp"), filed his "Motion for Bail on Appeal", citing substantial grounds warranting Akers' release on bail during the pendancy of appeal including, but not limited to: (a) Overstreet's improper admission of highly-prejudicial, irrelevant, and inadmissible evidence as to alleged/uncharged "prior/other bad acts" in violation of K.R.E. 404(b) & (c) as further set out in **Bell v. Commonwealth, Ky., 875 S.W.2d 882, 890, (1994)**; (b) Overstreet's refusal to admonish the jury with respect thereto as required by K.R.E. 105 [supra, page 39 hereof]; (c) Akers compliance with all pre-trial conditions of release [Exhibit "AAA" hereto]; and (d) That said "Motion"

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[95] See **ARTICLE IV-SECTION 2** [supra, page 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emph. added); **U.S. Const. Amend. 8** [id., page 10 hereof], i.e., "Excessive bail shall not be required, ...**nor...unusual punishments inflicted**" (emph. added); **U.S. Const. Amend. 13** [id.], i.e., "Neither slavery nor **involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted**, shall exist within the United States or **any place** subject to their jurisdiction" (emph. added); **U.S. Const. Amend. 14** [id., page 10 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws**" (emphasis added); and, ***inter alia***, herein paragraphs E-82 through E-86, E-90, E-94 through E-99, E-104, E-107 through E-114, & E-121 through E-123.

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was "**OVERRULED**" by Overstreet on, or about, November 21, 1996, stating, ***inter alia***, that: (e) "[Akers] would be **a threat to society, regardless of his behavior prior to the conviction.**" [see Exhibit "BBB" hereto][96] (emphasis added)

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[96] Again, see (in reality): Herein Exhibits "B" through "K", "T", "V", [collective Exhibit] "YY", & "TTT" hereto for contrasting view . See also: **Ky Const § 2. Absolute and arbitrary power denied** [supra, page 26 hereof], i.e., "**Absolute and arbitrary power over the lives, liberty and property of freemen exists nowehere in a republic, not even in the largest majority**" (emphasis added); "**Ky Const § 16** [page 27 hereof], i.e., "**Right to bail; habeas corpus: "All prisoners shall be bailable** by sufficient securities, unless for capital offenses when the proof is evident or the presumption is great" (emphasis added); **Ky Const § 26** [supra, page 28 hereof], i.e., "To guard against transgression of the high powers we have delegated, We Declare that **every thing in this bill of rights is excepted out of the general powers of government and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void**" (emphasis added).

ARTICLE IV-SECTION 2, U. S. Constitution [supra, page 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emphasis added); **U.S. Const. Amend. 14** [supra, pages 10 & 11 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. ...**nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws.**" (emph. added); **Commonwealth v. Hardin, S.W.2d 498 (1958)**, i.e., "What is the purpose of an appeal in any criminal case? It is to avoid the consequences of conviction. So it is with this appeal. It differs from other appeals, only as to grounds presented for reversal and the manner of presentation, not in purpose. **It is therefore the opinion of this Court that the defendant was entitled to bond pending appeal and the law is so certified.**" (emphasis added); Hereinabove paragraphs E-12, E-82 (w/corresponding footnote [82]), E-83, E-85, E-86.II, III, V(a), (c) thru (e), VI, & VIII, E-89; Hereinafter paragraphs E-92 thru E-94, E-96, E-97, E-99 thru E-104, E-106 thru E-108, E-110 thru E-113, & E-121 thru E-123; **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights** [supra, page 16 hereof], i.e., "**Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof to **the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" (emph. added); and **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights** [id.], i.e., "(2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..." (continued, page 123 hereof)

91. On March 5, 1997, Assistant Attorney General for the Commonwealth of Kentucky, Cindy G. Swartz (hereinafter "Swartz") performed her "chain-like" function[97] in furtherance of those conspiracies as outlined in hereinabove paragraphs A-2, A-3(f), E-12 thru E-14, E-16, E-24, E-35, E-36, E-38, E-40 thru E-45, E-47 thru E-49, E-50(a), (d), (e), & (f), E-56(a), (b), & (e), E-61, E-64 thru E-67, E-72 thru E-77, E-81 thru E-90, together with all corresponding footnotes thereto, by filing and serving her "Brief for Appellant" [Exhibit "CCC" hereto], and attempting to mislead the Kentucky Court of Appeals in presenting **totally unfounded, unsupported, and/or outright fraudulent** "Counter-statements of Facts" including, **but not limited to**: (a) "After throwing [Bishop] into the wall, Appellant continued to hit her and kick her body" [id., page 1, lines 17 thru 19]; (b) "Four days after the assault, [Bishop] sought medical attention"; (c) "[Bishop's] internal medicine physician testified that prior to the assault, [Bishop] had never complained of neck pain" [id., ...

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[96] (continued from page 122 hereof): "...or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws,** or to injure him or his property for lawfully enforcing, or **attempting to enforce,** the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy,** whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators." (emph. added)

[97] See: **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights** [supra, page 16 hereof] and footnotes [10, 11, 12] thereto [id, page 17 hereof]

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page 2, lines 4 thru 7]; (d) "Appellant continually violated the [May 10, 1994, "Emergency Protection"] order by constantly making threatening phone calls to the bank. During one phone

call, Appellant told [Bishop] that he was going to go for the throat now" [id., lines 10 thru 12]; (e) "[Akers] called one of [Bishop's] fellow employees a 'bitch' and threatened to harm several others" [id., lines 15 thru 17]; (f) "Dr. Von (sic) stated that [Bishop's] symptoms were due to her trauma from the physical altercation with [Akers]" [id., page 3, lines 7 & 8]; (g) "Essentially, [Akers] stalked [Bishop] throughout most of their marriage." [id., page 7, line 21 thru page 8, line 1]; (g) Dr. Inbeck (sic) testified that based upon the information he received from [Bishop], he felt the pain she was having was due to the altercation with [Akers]." [id., page 14, item 7].[98]

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[98] See: **TITLE 18 U.S.C. § 1503. Influencing or injuring officer or juror generally** [supra, page 13 hereof], i.e., "(a) Whoever **corruptly...endeavors to influence or impede any** grand or petit juror, or **officer in or of any court of the United States, ...or endeavors to influence, obstruct, or impede, the due administration of justice**, shall be punished as provided in subsection (b)." (emph. added); **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights**: [id., page 16 hereof], i.e., "**Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" (emphasis added); **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights** [id.] (2) If **two or more persons in any State** or Territory or the District of Columbia **conspire**...for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws**, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause**..." (continued, page 125 hereof)

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92. Having been denied "Bail on Appeal" by Overstreet [see hereinabove paragraph E-90]; (a) on May 29, 1997, Akers filed his "APPLICATION FOR BAIL PENDING APPEAL" [Exhibit "DDD" hereto] with the Kentucky Court of Appeals

pursuant to RCr 12.82 citing substantial bases for the granting thereof.

93. (a) On June 9, 1997, Swartz continued to perform her "chain-like" function in furtherance of those conspiracies as outlined in hereinabove paragraphs A-2, A-3(f), E-12 thru E-14, E-16, E-24, E-35, E-36, E-38, E-40 thru E-45, E-47 thru E-49, E-50(a), (d), (e), & (f), E-56(a), (b), & (e), E-61, E-64 thru E-67, E-72 thru E-77, E-81 thru E-91, and all the corresponding footnotes thereto, by filing her frivilous and/or fraudulent "RESPONSE..." [Exhibit "EEE" hereto] to Akers' "APPLICATION FOR BAIL PENDING APPEAL" [Exhibit "DDD" hereto] resulting in; (b) the further denial of Akers' liberty by the Kentucky Court of Appeals. [see "ORDER" of August 14, 1997, Exhibit "FFF" hereto]

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[98] **TITLE 42 U.S.C. § 1985** (continued from page 124 hereof): "...**to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators." (emphasis added); and **"Fraud" defined**: "...A generic term, embracing all multifarious means which human ingenuity can devise, ...**to get advantage over another by false suggestions** or **by suppression of the truth** ...; As distinguished from negligence, **it is always positive, intentional**. It comprises **all acts, omissions, and concealments** involving a breach of a legal **or equitable duty and resulting in damage to another**. And includes **anything calculated to deceive**, whether it be a single act **or combination of circumstances**, whether the **suppression of truth or the suggestion of what is false**, whether it be direct falsehood or by innuendo, by speech or **by silence**, by word of mouth, **or by look or gesture**." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]

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94. While imprisoned pursuant to his convictions resulting from hereinabove paragraphs E-31, E-32, E-35, E-36, E-38, E-40 thru E-42, E-48, E-51, E-54, E-56 thru E-68, E-70 thru E-79, & E- 81 thru E-87, and for the purpose of preparing further "post-conviction relief" in addition to his appeal, (a) on June 10, 1997, Akers filed a motion with Overstreet for provision (**at Akers' expense**) of certain documentation on file with Fayette

Circuit Court [see Exhibit "GGG" hereto]; and (b) Overstreet "**OVERRULED**" that said motion on June 27, 1997, on the purported grounds that Akers was otherwise represented by counsel [see Exhibit "HHH" hereto]; (c) Akers then filed his "MOTION FOR RECONSIDERATION...AND FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW..." [Exhibit "III" hereto] advising Overstreet that counsel had only been retained by Akers for the **sole purpose of appeal** and was **not authorized** by Akers to proceed in any other manner; and subsequent "MOTION TO RULE..." [Exhibit "JJJ" hereto]; and (d) that motion was also "**OVERRULED**" by Overstreet on August 20, 1997.[99] [see Exhibit "KKK" hereto]

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[99] See: **ARTICLE IV-SECTION 2**, U. S. Constitution [supra, page 6 hereof],i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emphasis added); **ARTICLE III-SECTION 2** [id.], i.e., "[1.] The judicial power shall extend to all cases, **in law or equity**, arising under this constitution, the laws of the United States...; ...between citizens of different states" (emphasis added); **ARTICLE IV-SECTION 2** [id.], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emph. added); **U.S. Const. Amend. 5** [id., page 7 hereof], i.e., "No person shall...**be deprived of...liberty**, or property, **without due process of law**" (emphasis added) and corresponding footnote [5], i.e., "Due process of law" defined: "Law in its regular course of administration through courts of justice. ...Due process of law implies the right of the person affected thereby to be present before the tribunal..." (continued, page 127 hereof]

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[99] "Due process of law" defined (continued from page 126 hereof): "...which pronounces judgement upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony **or otherwise**, and to have the **right of controverting ...every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law**. An orderly proceeding wherein a person is **served with notice**, actual or constructive, and **has an opportunity to be heard and to enforce and protect his rights** before a court having power to hear and determine the case. ...**The concept of 'due process of law' as it is embodied in the Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious**... U. S. v. Smith, D.C. Iowa, 249 F.Supp. 515, 516. Fundamental requisite of 'due process' is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice

whether to acquiesce or contest... Trinity Episcopal Corp. v. Romney, D.C.N.Y., 387 F.Supp. 1044, 1084. **Aside from all else, 'due process' means fundamental fairness and substantial justice**. Vaughn v. State, 3 Tenn. Crim. App. 54, 456 S.W.2d, 879, 883. Embodied in the due process concept are the basic rights of a defendant in criminal cases and the requisites for a fair trial. These rights and requirements have been expanded by Supreme Court decisions and include, timely notice of a hearing or trial which informs the accused of the charges against him or her; **the opportunity to confront accusers and to present evidence on one's own behalf before an impartial jury or judge**; the presumption of innocence under which **guilt must be proven** by legally obtained evidence and **the verdict must be supported by the evidence presented**, and **the guarantee that an individual will not be tried more than once for the same offense (double jeopardy)**." [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998 (emphasis added)]; ; **U.S. Const. Amend. 14** [id., pages 10 & 11 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws**" (emphasis added) and corresponding footnote [99], i.e., "**Equal protection of the law" defined**: **"The constitutional guarantee of "equal protection of the law" means that no person or class of persons shall be denied the same protection of the laws... in their lives, liberty, property, or in their pursuit of happiness**. People v. Jacobs, 27 Cal.App.3d 246, 103 Cal.Rptr. 536, 543; 14th Amend., U.S. Const. ...**The equal protection of the laws of a state is extended to persons within its jurisdiction...with like rules of evidence and modes of procedure, for the security of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; ...when no different or greater punishment is enforced against them for a violation of the laws.**" **See also**: "**Equal protection clause**", i.e., "**That provision of the 14th Amendment to U.S. Constitution which prohibits a State from denying any person within its jurisdiction the equal protection of the laws. This clause requires that persons...be given equal protection** in the enjoyment of personal rights and the prevention **and redress of wrongs**." [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998 (emphasis added)]; **TITLE 18 U.S.C. § 5. United States defined:** The term "United States", ..." (continued, page 128 hereof]

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[99] **TITLE 18 U.S.C. § 5** (continued from page 127 hereof): "...as used in this title in a territorial sense, includes **all places** and waters, continental or insular, **subject to the jurisdiction of the United States**, except the Canal Zone." (emphasis added); **TITLE 28 U.S.C. § 1654**: [id., page 16 hereof], i.e., "In all courts of the United States, **the parties may plead and conduct their own cases personally** or by counsel as, by the rules of such courts, respectively, are

permitted to manage and conduct causes therein" (emphasis added); **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights** [id.], i.e., "**Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof to **the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" (emphasis added); **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights**: (2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or **if two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws**, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators" (emphasis added) and corresponding footnotes [10], [11], & [12] thereto, i.e., "**Conspiracy**" defined: "A combination or confederacy between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or criminal act, or **some act which is lawful in itself, but becomes unlawful when done by the concerted action of the conspirators**, or for the purpose of using criminal or unlawful means to the commission of an act in itself unlawful. A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he: (a) agrees with other such person that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or (b) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime. Model Penal Code, § 5.03. **A conspiracy may be a continuing one; actors may drop out, and others drop in**; the details of operation may change from time to time; the members need not know each other or the part played by others; a member need not know all the details of the plan or the operations; he must, however, know the purpose of the conspiracy and agree to become a party to a plan to effectuate that purpose. **There are a number of federal statutes prohibiting specific types of conspiracy**." [Black's Law Dictionary, Abridged Sixth Edition, 8th Reprint-1988 (emph.added)]; "*[Chain] Conspiracy*" defined [id.], i.e., "Such a conspiracy is characterized by different..." (continued, page 129 hereof)

95. Having received no relief pursuant to those requests in hereinabove paragraph E-94; (a) on August 1, 1997, Akers filed his "Open Records Request" [see Exhibit "LLL" hereto] with the Fayette [Kentucky] Circuit Court Clerk in effort to obtain those records denied by Overstreet and, in performance of their "chain-like" function in furtherance of those conspiracies as outlined hereinabove, **that request was ignored** by officers and/or employees of the Office of Fayette [Kentucky] Circuit Court Clerk (known only as a group of persons at the Office of the Fayette [Kentucky] Circuit Court Clerk, hereinafter "FCC Does 1 through 10").[100]

96. Pursuant to Akers' appeal of those convictions in hereinabove paragraphs E-80 & E-81, the Court of Appeals of the Commonwealth of Kentucky rendered Its **first** "Opinion Vacating and Remanding" [see Exhibit "MMM" hereto] Akers convictions on February 27, 1998, on the explicit grounds that: (a) Akers was denied due process of law by improper joinder of offenses; (b) the trial court had improperly admitted evidence of alleged and...

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[99] "*[Chain] Conspiracy*" defined (cont'd from page 128 hereof): "...activities carried on with same subject of conspiracy in chain-like manner that **each conspirator in a chain-like manner performs a serparate function which serves in the accomplishment of the overall conspiracy.**" [id.]; and "*[Civil] Conspiracy*" defined [id.], i.e., "The essence of a 'civil conspiracy' is a concert or combination to defraud or cause other injury to person or property, which results in damage to the person or property of plaintiff." See also: "[Civil] Conspiracy" further defined: "A combination of two or more persons who, by concerted action, seek to accomplish an unlawful purpose or to accomplish some purpose, not in itself unlawful, by unlawful means." [id.]

[100] Hereinabove paragraph E-94 and corresponding footnote [99] thereto are re-stated herein the same as if set forth in its entirety.

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uncharged prior/other bad acts; (c) the trial court refused to admonish the jury with respect thereto such alleged an uncharged prior/other bad acts; and (d) further ruling that:

"While this evidence was **somewhat relevant to aspects of the stalking charge**, we agree with Akers that its probative value did not outweigh its prejudicial effect. **Moreover, the evidence of Akers' prior acts of domestic violence was not even arguably relevant to the assault charge.**" [id., page 6, lines 4 thru 10 (emphasis added)];

"Considering the trial court's **failure to make a finding [as to] the probative value of the evidence and** the trial court's **refusal to admonish the jury as to the proper use of the evidence**, we must vacate and remand for a new trial." [id., lines 14 thru 18 (emphasis added)]; and

"...**the evidence supporting a finding of first degree assault was not overwhelming**. As discussed, we cannot dismiss the likely probability that the jury improperly considered Akers' character when determining the degree of the assault. **As a result, we are compelled to vacate the assault conviction as well.**" [id., page 11, lines 1 thru 6 (emphasis added)][101]

97. On March 5, 1998, Overstreet conveyed by and through Akers' attorney Marcel Bush Radomile (hereinafter "Radomile") a "**condition**" to the effect that: "She (Overstreet) won't recuse herself **unless you** (Akers) **hire her husband** as defense counsel for your (Akers) new trial".[102] (emphasis added)

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[101] See also: TT#1, M. Radomile/L. Red Corn/R. Overstreet, 10/26/98, 13:31:00, et seq., i.e., Akers' motions accordingly pursuant to retrial.

[102] **It is well-known among Central Kentucky's legal community that it is virtually impossible to receive fair treatment and, in fact, that a party to an action will be "victimized" in Overstreet's court unless that party is on the same "political side" as Overstreet.** It is, as well, **clearly understood that the only way to secure Overstreet's recusal** and, thereby, avoid her oppression and/or tyranny, is to secure the services of her husband (an attorney in Versailles, [Central] Kentucky) to **force her recusal as "conflict of interest".** Even worse, it has been a **long-standing practice of Overstreet to capitalize on this scenario for the...**" (continued, page 131 hereof)

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[102] (continued from page 130 hereof): "...express extortionate purpose of both building the practice of her husband and capitalizing upon the misfortune of any adverse party within her "kangaroo court". See also: United States Codes Annnotated [supra, page 11 hereof, et seq.], i.e., TITLE 18 U.S.C. § 2. Principals: "(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces, or procures its commision, is punishable as a principal. (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." (emphasis added); TITLE 18 U.S.C. § 3. Accessory after the fact: "Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact." (emph. added); TITLE 18 U.S.C. § 5. United States defined: "The term 'United States', as used in this title in a territorial sense, includes all places and waters, continental or insular, subject to the jurisdiction of the United States, except the Canal Zone." (emphasis added); TITLE 18 U.S.C. § 1503. Influencing or injuring officer or juror generally: "(a) Whoever corruptly ...endeavors to influence or impede any grand or petit juror, or officer in or of any court of the United States, ...or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished as provided in subsection (b)." (emphasis added); TITLE 18 U.S.C. § 1512. Tampering with a witness, victim, or an informant: "(b) Whoever knowingly uses intimidation ...or corruptly pursuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to – (1) influence, delay, or prevent...testimony of any person in an official proceeding; (2) cause or induce any person to – (A) withhold testimony, or withhold a record, document, or other object from an official proceeding; (B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability in an official proceeding; shall be fined under this title or imprisoned not more than ten years, or both." (emphasis added); TITLE 18 U.S.C. § 1341 [supra, page 13 hereof], i.e., "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, ...or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever, to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by such carrier according to the direction thereon, or at the place at which it is directed to be delivered to the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than five years, or both." (emph.added); TITLE 18 U.S.C. § 1961 [supra, page 14 hereof]: "(1) 'racketeering activity' means ...; (B) any act which is indictable under any of the following provisions of title 18, United States Code: ...section 1341 (relating to

mail fraud), section 1343 (relating to wire fraud), ...section 1503 (relating to obstruction of justice); ...section 1512 (relating to tampering with a witness, victim, or an infor[illegible]nt); (2) 'State' means any State of the United States, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof; (3) 'person' includes any individual, or entity..." (continued, page 132 hereof)

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[102] **TITLE 18 U.S.C. § 1961** (continued from page 131 hereof): "...capable of holding a legal or beneficial interest in any property; (4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and **any union or group of individuals associated in fact** although not a legal entity; (5) 'pattern of racketeering activity' **requires at least two acts** of racketeering activity, one of which occurred after the effective date of this chapter and at least one of which occurred within ten years after the commission of a prior act of 'racket-eering activity'" (emphasis added); **TITLE 18 U.S.C. § 1962** [supra, page 14 hereof], i.e., "(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity...in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, **to use or invest, directly or indirectly, any part of such income**, in acquisition of any interest in, **or the activities of which affect**, interstate commerce; (d) It shall be unlawful for any person **to conspire** to violate any of the provisions of subsection (a), (b), or (c) of this section" (emphasis added); **K.R.S. 514.080 Theft by extortion**: "(1) A person is guilty of theft by extortion when he intentionally obtains the property of another **by threatening to**: (b) **Accuse anyone of a criminal offense**; or (c) **To expose a secret tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business repute**...; (3) Theft by extortion is a Class A misdemeanor unless the value of the **property obtained is three hundred dollars or more**, in which case it is a **Class D felony**." (emphasis added). **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights**: "**Every person** who, **under color of any statute, ordinance, custom**, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress;" (emphasis added); **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights**: "(2) If **two or more persons** in any **State** or Territory or the District of Columbia **conspire** to...influence the verdict, presentment, or indictment of any grand or petit jury..., or if **two or more persons conspire** for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen equal protection of the laws**, or to injure

him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, **or class of persons**, to the equal protection of the laws; (3) ...**in any case of conpiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators." (emphasis added); hereinabove paragraphs A-1, A-2, A-3, A-4, A-5, E-1, E-2, E-12, E-44, E-82 and corresponding Exhibits "UU", "VV", "WW", & "XX" thereto, E-83, E-85 thru E-87, E-89, E-90, E-[illegible] & E-96; and herein-after paragraphs E-99, E-104, E-105, E-107 thru E-114, E-121, & E-123 thru E-127.

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98. On April 2, 1998, Akers was released from the Kentucky Department of Corrections and transferred back to Fayette County Detention Center pending re-trial on both the indicted charges.

99. On April 5, 1998, Akers was again arraigned before Overstreet and, **despite Akers' "Motion for Bond Reduction"** in view of having "served out" over three (3) years imprisonment, **Overstreet increased Akers' pre-trial bail of "$52,000 Property Bond" to "$52,000 Full Cash", effectively doubling Akers' prior conditions for release** [see Exhibit "NNN" hereto and herein above paragraphs E-80, E-82, & E-83] and citing "new domestic violence laws" enacted in 1998 as her reasons therefor.[103]

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[103] See: **ARTICLE I-SECTION 10**: [supra, page 6 hereof], i.e., "[1.] **"No state shall...pass any bill of attainer, *ex post facto* law...**" (emphasis added); **ARTICLE IV-SECTION 2, U. S. Constitution** [id., page 6 hereof], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emph. added); **U.S. Const. Amend. 8** [id., page 10 hereof], i.e., **"Excessive bail shall not be required, nor...unusual punishments** inflicted" (emphasis added); **U.S. Const. Amend. 14** [id., pages 10 & 11 hereof], i.e., **"All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside. No State shall make or enforce any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its jurisdiction equal protection of the laws.**"

(emphasis added); **ARTICLE 1, SECTION 15, Tennessee Constitution** [supra, page 20 hereof], i.e., "**Bailable offenses - Habeas corpus** - That **all prisoners shall be bailable by sufficient sureties**, unless for capital offences, when the proof is evident, or the presumption great. And **the writ of Habeas corpus shall not be suspended**, unless in case of rebellion or invasion, the General Assembly shall declare the public safety requires it." (emphasis added); **ARTICLE 1, SECTION 16, Tenn. Const.** [id., page 20 hereof], i.e., "**Restrictions on bail, fines and punishment** - "That **excessive bail shall not be required**, nor excessive fines imposed, **no cruel and unusual punishments inflicted.**" (emphasis added); **Ky Const § 2** [supra, page 26 hereof], i.e., "**Absolute and arbitrary power denied: "Absolute and arbitrary power over** the lives, liberty and property of **freemen exists nowehere in a republic, not even in the largest majority**." (emphasis added); **Ky Const § 16. Right to bail; habeas corpus** [id., page 27 hereof], i.e., "**All prisoners shall be bailable**..." (continued, page 134 hereof)

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100. On April 15, 1998, (a) Harvil and Akers' family posted the ordered $52,000 Full Cash Bond; (b) Akers was then released from custody; and (c) **promptly returned to Nashville, Tennessee, with Harvil.**

101. On April 16, 1998, Akers' then counsel, David A. Tapp, (hereinafter "Tapp") filed a "Motion to Sever" Akers' charges for re-trial [Exhibit "OOO" hereto] and a "Motion in Limine" with respect to alleged "prior/other bad acts" [Exhibit "PPP" hereto], consistent with the Kentucky Court of Appeals' "Opinion Vacating and Remanding" noted in hereinabove paragraph E-95.

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[103] **Ky Const § 2** (continued from page 133 hereof): "... by sufficient securities, unless for capital offenses when the proof is evident or the presumption is great..." (emphasis added); **Ky Const § 17** [id.], i.e., "**Excessive bail or fine, or cruel punishment, prohibited: "Excessive bail shall not be required** ..." (emphasis added); **Ky Const § 19 (1)** [id., page 28 hereof], i.e., "**No ex post facto law, ...shall be enacted**" (emphasis added); **Ky Const § 26** [id.], i.e., "To guard against transgression of the high powers we have delegated, We Declare that **every thing in this bill of rights is excepted out of the general powers of government and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void.**" (emph.added); **[Kentucky Rule of Criminal Procedure] RCr 4.54 Continuation of bail:** "(3) In the event of a reversal of a conviction by an appellate court granting the defendant a new trial, the defendant shall be entitled to the rights of pretrial release under Rule 4.04

as if on initial appearance. (4) The efficacy of a bail bond shall not be affected by the fact that the defendant is prosecuted for an offense different from but arising out of the same occurrence as the charge named in the bail bond." (emph. added); Kentucky Criminal Practice § 11.09 Modification or revocation of bail, i.e., "In Marcum v Broughton, the Court held that after bond has been set by the court, the bond may not be increased or revoked without a change in the defendant's status. The Court stated that increasing the bond without any reason would be an arbitrary action in violation of § 2 of the Constitution of Kentucky" (emph. added); Kentucky Criminal Practice § 11.10 Termination of right to bail by operation of law, i.e., "The setting aside of the judgement of conviction and remanding for a new trial would place the defendant in the same position as he was prior to conviction, thus raising a good ground for reducing the amount of the bail to the pre-conviction level."; and CP#1, R. Overstreet/D. Tapp, 04/09/98, 13:22:25, et seq.

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102. On April 20, 1998, Tapp filed a "Motions to Dismiss Count Two of the Indictment" on grounds that **the Commonwealth's "case-in-chief" with respect to that charge was based upon acts alleged to have occurred while Akers was not subject to a valid "Domestic Violence Order"** and, therefore, that one "essential element" of "First Degree Stalking" **was not satisfied.** [see Exhibit "QQQ" hereto and hereinabove paragraphs E-64 thru E-68][104]

103. On April 21, 1998, a "Pre-Trial Conference" was held at Fayette Circuit Court, during which Red Corn tendered her offer to "Amend Assault 1st - Assault 4th - 12 mos; Stalking 1st - 5 yrs." [see Exhibit "RRR" hereto]

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[104] The required elements of "Stalking in the First Degree – 508.140" are: "(1) Intentionally (2) Stalk another person; and (3) Make an explicit or implicit threat with intent to place that person in reasonable fear of: (a) Sexual contact as defined in KRS 510.010, or (b) Serious physical injury, or Death; and (4)(a)(i) A protective order or another judicial order as provided in KRS Ch 403 has been issued to protect same victim, and (ii) Defendant has been served with the summons or order or been given actual notice; [or (b)(i), (c)(i), and (d) do not apply]; and (5) Venue." [West Group/Westlaw Publishing, Kentucky Revised Statutes, 1995 Edition (emph. added)]. See also: Hereinabove paragraphs E-51 thru E-68. Notwithstanding that it should be obvious that Akers did not intend to "stalk" Bishop, in any manner, there can be no question that his acts

upon which Kentucky officials relied (i.e., threatening Bishop with a "lawsuit") do not reach the "intent" element of K.R.S. 508.140(3). Further, and that which is the subject matter of Tapp's motion, there can be **absolutely no question that Kentucky had no "personal jurisdiction" over Akers on July 7, 1995, regardless of the context** in which Bishop perceived his "go for the throat" comment. **See additionally**: Hereinabove paragraphs E-51, E-54, E-64 thru E-68, & E-72 thru E-82 together with corresponding footnotes thereto; **K.R.S. 500.060** [supra, page 31 hereof] together with corresponding footnote [32] thereto; and **U.S. v. Casciano, 927 F.Supp. 54 N.D.N.Y. 1996**, i.e., "11. ...**For purposes of crossing a state line with intent to engage in conduct in violation of protective order, if court issuing order has failed to obtain personal jurisdiction** over defendant by service of process, **then order was invalid and prosecution cannot survive**. 18 U.S.C.A. § 2262(A)(1); 12. Due process clause requires that notice be reasonably calculated, **under all circumstances**, to apprise interested parties of penalty of an action and afford them an opportunity to present their objections. **U.S.C.A. Const. Amend. 5.**" (emphasis added)

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104. On May 20, 1998, a hearing was conducted pursuant to those "Motions" in hereinabove paragraphs E-100 & E-101.[105] **After having effectively OVERRULED all three motions**, Overstreet made the following statement to the parties **on the record** [see CP#1, R. Overstreet, 04/24/1998, 14:29:50]:

> Overstreet: "Maybe I'm wrong, **and I haven't read the Court of Appeals opinion**, but wasn't their problem -- (emphasis added)

[**Note**: The period of time covered by the indictment for Count 2: First Degree Stalking had already been ammended to read: "from November 1994 to May 1995" on May 8, 1998. See Exhibit "SSS" hereto and TT#1, M. Radomile/L. Red Corn/R. Overstreet, 10/26/98, 13:31:00, et seq.]

105. On May 5, 1998, Akers was hired as a Project Manager for Interkal/GDS Seating, Incorporated, of Kalamazoo, Michigan, and Fountain Inn, South Carolina, and assigned "full charge" authority of their $4,700,120.00 contract for the Tennessee NFL Stadium in Nashville, Tennessee. [see Exhibit "TTT" hereto]

106. (a) During the succeeding months of May, 1998 until Akers' re-trial on October 26, 1998, Akers made every reasonable attempt to finally resolve all "criminal matters" in Kentucky...

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[105] Red Corn stated, on the record, that: "**Although [Akers] was not on actual notice of the extension** [of the previous Domestic Violence Order], **we felt like he shouldn't be allowed to benefit from not making himself available to be served...**" [see CP#1, L. Red Corn, 05/08/98, 14:41:05, et seq.; CP#1, L. Red Corn/D. Tapp, 05/29/98, 14:27:05, et seq.; hereinabove paragraphs E-51, E-54, E-64, E-65, E-66, E-62 thru E-70, **esp. E-71**, E-72 thru E-83, E-86, & E-96 together with all corresponding footnotes thereto; **U.S. Const. Amend. 5** [supra, page 7 hereof together with corresponding footnote [5]]; **U.S. Const. Amend. 14** [id., page 10 hereof together with corresponding footnote [6]]; and **U.S. v. Casciano, 927 F.Supp. 54 N.D.N.Y. 1996** [hereinabove footnote [104]]. **Red Corn further stated that she "strongly disagree[d] with the [Kentucky] Court of Appeals..."** as to the relevancy of her proposed evidence of "other bad acts". [see CP#1, L. Red Corn, 05/08/98, 14:47:45, et seq.]

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and to that desired end, retained Earnest W. Williams (a former U. S. Attorney for the Middle District of Tennessee, hereinafter "Williams"), to negotiate a resolution thereof, but Akers could not **conscienably accept** Red Corn's offers of: (a) "5 years for a guilty plea of 1st degree stalking and 4th degree assault"; **then** (b) "4 years for a guilty plea of 1st degree stalking stalking and 4th degree assault"; and **finally**, (c) "5 years probation for a guilty plea of 1st degree stalking 4th degree assault". [see Collective Exhibits "UUU" hereto]

107. (a) On September 5, 1998, Williams conveyed to Akers the results of his meeting with Red Corn on September 2, 1998, and her resolution offer in hereinabove paragraph 106(d) with the express conditions that: (b) The Commonwealth Attorney's Office for the [Kentucky] Twenty-second Judicial District had "no problem with [the offer] but that [they didn't] know whether Overstreet [would] agree to it"; and (c) that "[Akers would] have to hire someone who [Overstreet] trust[ed] (i.e., either Mike Maloney, Larry Roberts, or Jim Lowrey, all of

whom are attorneys in the Lexington, Kentucky, area and then supporting Overstreet's campaign for a seat on the Kentucky Supreme Court) to present it to [Overstreet]."[106]

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[106] See: **ARTICLE IV-SECTION 2 [1.], U.S. CONST.** [supra, page 6 hereof], i.e., "The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states"; **U.S. Const. Amend. 4** [supra, page 6 hereof], i.e., "The right of the people to be secure in their **persons**, houses, papers, and effects, against unreasonable searches and **seizures**, shall not be violated" (emphasis added); **U.S. Const. Amend. 14** [id., pages 10 & 11 hereof], i.e., "**All persons** born or..." (continued, page 138 hereof)

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[106] **U.S. Const. Amend. 14** (continued from page 137 hereof): "...naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**." (emphasis added); **ARTICLE 1, SECTION 8, Constitution of Tennessee** [supra, page 18 hereof], i.e., "That **no man shall be taken or imprisoned, or disseized of his free-hold, liberties or privileges**, outlawed, **or exiled** or in any manner **destroyed or deprived of his life, liberty, or property, but by the judgement of his peers or the law of the land**" (emphasis added); **Ky Const § 2. Absolute and arbitrary power denied** [supra, page 26 hereof], i.e., "**Absolute and arbitrary power** over the lives, liberty and property of **freemen exists nowehere in a republic, not even in the largest majority**" (emph. added); **Ky Const § 26** [supra, page 28 hereof], i.e., "To guard against transgression of the high powers we have delegated, We Declare that **every thing in this bill of rights is excepted out of the general powers of government and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void**" (emph. added); **TITLE 18 U.S.C. § 875. Interstate communi-cations** [supra, page 12 hereof], i.e, "(d) Whoever, **with intent to extort** from any person, firm, association, or corporation, **any money or other thing of value, transmits in interstate** or foreign commerce **any communication** containing any threat to injure the property **or reputation** of...another...**or any threat to accuse...any other person of a crime**, shall be fined under this title or imprisoned not more than two years, or both." (emphasis added); **TITLE 18 U.S.C. § 2. Principals**: "(a) Whoever **commits** an offense against the United States or **aids, abets, counsels**, commands, **induces, or procures** its commision, **is punishable as a principal**. (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." (emphasis added); **TITLE 18 U.S.C. § 5. United States defined**: "The term 'United States', as used in this title in a territorial sense, includes **all places** and waters, continental or insular, **subject to the**

jurisdiction of the United States, except the Canal Zone." (emph. added); **TITLE 18 U.S.C. § 1961** [supra, page 14 hereof]: "(1) 'racketeering activity' means...; (B) any act which is indictable under any of the following provisions of title 18, United States Code: ...section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), ...section 1503 (relating to obstruction of justice); ...section 1512 (relating to tampering with a witness, victim, or an informant); (2) 'State' means **any State** of the United States, **any territory** or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof; (3) 'person' includes any individual, or entity capable of holding a legal or beneficial interest in any property; (4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and **any union or group of individuals associated in fact** although not a legal entity; (5) 'pattern of racketeering activity' **requires at least two acts** of racketeering activity, one of which occurred after the effective date of this chapter and at least one of which occurred within ten years after the commission of a prior act of 'racketeering activity'" (emphasis added); **TITLE 18 U.S.C. § 1962** [supra, page 14 hereof], i.e., "(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity...in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, **to use or invest, directly or indirectly, any part of such income**, in..." (continued, page 139 hereof)

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108. On October 16, 1998, Overstreet **denied Akers the right to be heard and the right to *pro se* representation**[107] and further stated: "**Besides, I think I already know how the jury is going to rule in this case.**" [see CP#1, M. Radomile/J. Akers/R.Overstreet, 10/16/98, 11:29:00, et seq.]

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[106] **TITLE 18 U.S.C. § 1962** (continued from page 138 hereof): "...aquisition of any interestin, **or the activities of which affect**, interstate commerce; (d) It shall be unlawful for any person **to conspire** to violate any of the provisions of subsection (a), (b), or (c) of this section" (emphasis added); **K.R.S. 514.080 Theft by extortion**: "(1) A person is guilty of theft by extortion when he intentionally obtains property of another **by threatening to**: (b) **Accuse anyone of a criminal offense**; or (c) **To expose a secret tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business repute**...; (3) Theft by extortion is a Class A misdemeanor unless the value of the **property obtained is three hundred dollars or more**, in which case it is a **Class D felony**." (emph. added); **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights**: "**Every person** who, **under color of any statute, ordinance, custom**, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be**

subjected, any citizen of the United States or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws,** shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" (emphasis added); and **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights**: "(2) If **two or more persons in any State** or Territory or the District of Columbia **conspire** ...for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen equal proection of the laws,** or to injure him or his property for lawfully enforcing, or **attempting to enforce,** the right of any person, or class of persons, to the equal protect-tion of the laws; (3) ...**in any case of conpiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy,** whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators." (emphasis added)

[107] See: **ARTICLE IV-SECTION 2 [1.], U.S. CONST.** [supra, page 6 hereof]; **U.S. Const. Amend. 14** [id., page 10 hereof]; **TITLE 28 U.S.C. § 1654**: [id., page 16 hereof], i.e., "In all courts of the United States, **the parties may plead and conduct their own cases personally** or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." (emphasis added); **Ky Const § 2.** [supra, page 26 hereof]; and "**Due process of law**" defined, footnote [5] [supra, page 8 hereof].

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109. As well on October 16, 1998, Akers served, by "**Certified Mail-Return Receipt Requested**", copies of all those Affidavits of the Plaintiff James G. Akers, Deborah L. Harvil, Woodsie E. Akers, Alan P. Akers, A. Wayne Akers, Stacy B. Akers, Beaulahvene Brown, Darryl Brown, Charlotte S. Kirby, and Dennis R. Akers, in hereinabove paragraph E-1 and which such affidavits are appended hereto as Exhibits "B" through "K", respectively.

110. On October 26, 1998, Akers' "re-trial", pursuant to the hereinabove "amended indictment", was commenced and was a **virtual** "**repeat performance**" of the first trial in May of 1996 [see "Notice of Evidence Pursuant to KRE 404(b), Exhibit "VVV" hereto; and "Final Judgement [&] Sentence of Imprisonment" [Exhibit "WWW" hereto]. As in hereinabove

paragraph E-86, some of the "irregularities" and/or hereunto relevant portions of Akers second trial include, **but are in no way not limited to**, the following:

I. Pre-trial Matters:

(a) Overstreet refused to recuse herself from the bench in Akers' trial on grounds that she was a member of the same church as the Commonwealth's complaining witness and a majority of the additional Commonwealth witnesses and based upon previous statements by Overstreet indicating unquestionable and extreme bias; &

(b) Overstreet denied Akers' inalienable right to participate in his defense, esp., to participate in/attend all bench conferences with respect to his retrial [TT#1, M. Radomile/R. Overstreet, 09:15:40, et, seq.]

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II. Jury Selection Phase:

(a) Overstreet referred to Bishop as the "the victim" upon her initial address to the prospective jurors [TT#1, R. Overstreet, 10/26/98, 09:44:45]; &

(b) Eleven of the prospective jurors came forward and admitted that either they or someone intimately associated with them had previously been the "victim" of "domestic violence", yet only three were excused from the panel [TT#1, M. Radomile/L. Red Corn/R. Overtstreet, 10/26/98, 10:13:45].

III. Jury Voir Dire Phase:

(a) Red Corn refers to the case as being termed "domestic violence" [TT#1, L. Red Corn, 10/26/98, 09:50:15]; &

(b) Red Corn intentionally misled the jury with respect to the essential elements of "assault in the first degree" and with respect to the definitions of "deadly weapon" and/or "dangerous instrument" [TT#1, L. Red Corn, 10/26/98, 10:17:05, et seq.].

IV. OPENING ARGUMENTS:

(a) Red Corn intentionally misled the jury with respect

to the time period of the alleged "stalking", i.e., "starting in November until August are evidence of the stalking." [see TT#1, L. Red Corn, 10/26/98, 11:44:30 and hereinabove paragraph E-103]; &

(b) Defense Attorney Marcel Bush Radomile renewed and entered her "blanket objection" to introduction of evidence of alleged "bad acts" which occurred after the period of time excluded by the amended indictment for the "stalking" charge inasmuch as those allegations extended...

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into that period when Akers was not aware of the "extension" of the original "Domestic Violence Order" and such evidence was, therefore, irrelevant to the instant case under trial [see hereinabove paragraph E-103]; Radomile as well renewed her previous "Motion for Severance" of the charges on re-trial consistent with the Court of Appeals Opinion in hereinabove paragraph E-95. Overstreet again "**OVERRULED**" both the objection and renewed motion [TT#1, M. Radomile/L. Red Corn/R. Overstreet, 10/26/98, 13:31:00, et seq.].

V. PROSECUTION'S CASE-IN-CHIEF:

(a) As at Akers' first trial in May of 1996, Red Corn introduced evidence of Akers' previous testimony [see TT#1, B. Taylor/L.Red Corn, 10/26/98, 13:45:50] in a "civil proceeding" and which such testimony was **clearly inadmissible pursuant to the provisions of K.R.S. 403.780** [supra, page 31 hereof]; &

(b) Upon cross-examination of prosecution witness, Bernessa Taylor, by Akers' Defense Attorney, Marcel Radomile, the following exchange ensued between Radomile, Red Corn, and Overstreet [see TT#1, 10/26/98, 13:46:40, et seq. (emphasis added)]:

Radomile: So, Bernessa, you said you've worked for nineteen years in the Domestic Violence office?

Taylor: Not in Domestic Violence – I've worked for nineteen years in District Court – And in Domestic Violence since 1991.

Red Corn: Your Honor, could we approach the bench for just a moment? ...

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Radomile: Bernessa, how many times have you been to court with domestic violence issues?

Taylor: Several.

Radomile: Would you say hundreds?

Taylor: (affirmatively)

Radomile: **Hundreds of times, then. And while you've worked in Domestic Violence, you've had hundreds of people come in and get petitions from you? Is that right?**

Taylor: **Yes.**

Radomile: **Uh – How hard is it to get an Emergency Protective Order?**

Taylor: **Well – you just – as a victim, you have to allege that there's been an act of domestic violence or abuse or threatening.**

Radomile: So, can anyone go in there and

apply for a petition for an Emergency Protective Order?

Taylor: It has to be a family member that's – you know – in the guidelines of the statute.

Radomile: So, as long as it's someone who's living in the same household, then that person can go in and apply for a Domestic Violence Order? Is that right?

Taylor: Yes (affirmatively).

Radomile: And to apply for and E. P. O., they don't have to go to court, is that right?

Taylor: No.

Radomile: They just fill out a form? –

Taylor: Yes.

Radomile: **And if they allege the things that meet the criteria, then they're probably going to get an E. P. O. Is that right?**

Taylor: **Yes – if the judge finds that there's been an act of domestic violence or abuse.**

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Radomile: **Do people ever lie on these petitions?**

Red Corn: **Object**. I don't know how she could know.

Overstreet: **Sustained**.

Radomile: Have you ever been in a court hearing on an Emergency Protection Order where the --

Red Corn: **Object to the relevancy**.

Overstreet: Approach the bench.

[*Bench conference*]:

Overstreet: What's your question gonna be?

Radomile: Well -- it's -- uh -- **if this process lends itself to abuse by people** -- she's been there. **She's been in court hundreds of times. She's taken hundreds of Domestic Violence Petitions**. You know -- because - uh -- **everyone getting a divorce is going to start out in Domestic Violence Court to try to get favorable conditions for the divorce. The process lends itself to abuse and everybody knows it.**

Red Corn: **The basis for my objection is that others have come to court and lied is not relevant as to whether or not this witness came to court and lied**. And what she's trying to get at is certainly something she can argue in her closing argument. But to elicit testimony from a clerk that people in the

past have come in and lied is not relevant testimony regarding whether this witness has lied...

Overstreet: Well, I think at least it's gonna be **-- it opens up a whole new area and 'cause we'd have to re-try every domestic case we've ever had and I can't let you do that. ... I'll sustain the objection.**

(c) Red Corn interjected numerous "evidentiary harpoons" of irrelevant/inadmissible testimony not included in her "Notice...

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pursuant to K.R.E. 404(b)" [Exhibit "DDDD" hereto] including, but not limited to: (i) Insinuations that Akers had changed locks on the Akers' marital residence after those events as depicted in hereinabove paragraph E-31[108] for the express purpose of denying Bishop access thereto [TT#2, C. Bishop, 10/26/00, 15:00:55; TT#2, J. Preston, 10/27/98, 14:26:10. (**See:** TT#3, A. P. Akers, 10/27/98, 17:59:20, et seq., 18:22:00; and TT#3, J. G. Akers, 10/28/98, 13:42:00, et seq., & 14:30:55]; (ii) That Akers had damaged a car Bishop was driving at some time in 1992 [TT#2, C. Bishop, 10/27/98, 09:25:25]; and (iii) That, at some time during the early 1980's, Akers "had guns" [TT#2, C. Bishop, 10/27/98, 10:46:05, et seq., **esp., 10:46:50**; Yet, (iv) Akers' **motions for mistrial** were **"OVERRULED"** by Overstreet. [see esp., TT#2, M. Radomile/L. Red Corn/R. Overstreet, 10/27/98, 10:49:10];

(d) Bishop, under the encouragement, guidance, and sanction of Red Corn and Overstreet, respectively, committed numerous acts of "fraud"[109] including, but not limited to: (i) testimony with respect to herein paragraph E-31 to the effect that Akers had "pulled [her] out of the bed by the hair of [her] head and drug...

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[108] **This evidence was not noticed pursuant to K.R.E. 404(b)** [supra, page 40 hereof]; **was, therefore, both irrelevant and inadmissible pursuant to K.R.E. 404(c)** [id.]; was **simply not true with respect to Akers' intentions in doing so**; neither **Akers or son, Alan, had any recollection thereof and were totally unprepared to testify as to the truth or falsity thereof due to Red Corn's intentional failure to provide notice pursuant to K.R.E. 404(b); and, regardless, was not relevant** inasmuch as **it had no bearing whatsoever to the charges for which Akers was being tried.**

[109] **Footnote [87]** [supra, page 111 hereof] is re-stated herein the same as if set forth in its entirety. **See also: TITLE 18 U.S.C. § 1961** [supra, page 14 hereof]; and **TITLE 18 U.S.C. § 1962** [supra, page 14 hereof].

[her] out in the hallway", struck her "repeatedly in the face with his fist", "threw her through [and/or into] a wall" [TT#2, C. Bishop, 10/27/98,09:55:35, et seq.; and TT#2, J. Preston, 10/27/98, 14:26:50)]; and ordered Bishop to leave the marital home [TT#1, C. Bishop, 10/26/98, 14:29:50, et seq.,]; (ii) That (Bishop) had **never previously experienced any problems with her neck prior to May 4, 1994** [TT#1, C. Patrick, 10/26/98, 15:07:20 et seq.];[110] (iii) That Akers had, **at some time in the early 1990's**, severely damaged a "picture" of Bishop which had been photographed when Bishop was "eighteen or nineteen" years of age [TT#1, C. Bishop, 10/26/98, 16:16:25, et seq., TT #2, C. Bishop/L. Red Corn, 10/27/98, 09:10:55];[111] & (iv) introduced into evidence and **showed to the jury** a **retouched photograph** of an incident which occurred on August 10, 1989, which fraudulently...

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[110] **Footnote [87]** [supra, page 112 hereof] is re-stated herein the same as if set forth in its entirety. **See also**: Exhibits "B" & "D" thru "K", respectively, hereto; **TITLE 42 U.S.C. § 1985(2), (3)** [supra, pages 16 & 17 hereof]; and **"'Fraud' defined"**, footnote [7] [supra, page 13 hereof].

[111] **Footnote [78]** [supra, page 100 hereof] is re-stated herein the same as if set forth in its entirety. **See also**: Hereinabove paragraph E-86.V(c)(iv) and

corresponding footnote [88] thereto; **TITLE 18 U.S.C. § 1512 (b)(2)(B)** [supra, page 14 hereof]; **TITLE 42 U.S.C. § 1985(2), (3)** [id., pages 16 & 17 hereof]; and footnote [7] [supra, page 13 hereof], i.e., "**Fraud**" defined: "**A false representation of a matter of fact**, whether by words or by conduct, **by false or misleading allegations, or by concealment of that which should have been disclosed**... A generic term, embracing all multifarious means which human ingenuity can devise, ...**to get advantage over another by false suggestions or by suppression of the truth**...; As distinguished from negligence, **it is always positive, intentional**. It comprises **all acts, omissions, and conceal-ments** involving a breach of a legal **or equitable duty and resulting in damage to another**. And includes **anything calculated to deceive**, whether it be a single act **or combination of circumstances**, whether the **suppression of truth or the suggestion of what is false, whether it be direct falsehood or by inuendo**, by speach or **by silence**, by word of mouth, **or by look or gesture**." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]

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depicted Bishop with swelling on her forehead as evidence of injury caused by Akers [TT#2, C. Bishop, 10/27/98, 09:23:45, 09:24:15, 09:48:55, et. seq.]; **yet, nonetheless**, (v) Bishop **admitted she had never filed an "assault" charge against Akers until initiated by the Fayette County [Kentucky] Grand Jury on November 6, 1995** [TT #2, 09:40:25].

(e) Vaughan testified that: (i) **Bishop did not disclose to him, nor did he inquire as to Bishop's history of any similar problems with her neck** [TT#1, J. Vaughn, 10/26/98, 16:27:40, 16:47:30, 16:53:00]; (ii) **Bishop's X-ray and M.R.I. Reports revealed that she had long-standing "Degenerative Disc Disease"** [id., 16:37:49] **which had been developing over a period of several years prior to May 4, 1994** [id., 16:51:40] and which could have, **in itself, resulted in herniated discs** [id., 16:49:00, 16:50:25, 16:51:15]; (iii) **Bishop's surgery was the result of those herniated discs** [id., 16:31:40, 16:32:10, 16:34:30, 16:36:00; **and that "[he] would say that bending, rotating, twisting of [Bishop's] neck is going to be limited because of the surgery**" [TT#1, J. Vaughan, 10/26/98, 16:43:00, et seq. (emphasis added)].

(f) Fulmer testified that, **upon his initial examination of Bishop on May 16, 1994, "her range of motion appeared to be normal"** [TT #2, A. Fulmer, 10/27/98, 10:55:00, 11:00:20] and

that "**her X-rays were normal**" [TT #2, 10/27/98, 10:55:55].

(g) Layne, under encouragement, guidance, and/or sanction of Bishop, Red Corn and Overstreet, respectively, committed numerous acts of "fraud" including, **but not limited to**, testimony that: (i) Akers had...

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made telephone calls to, among others, Layne, Bishop, and Bishop's attorney in June and July of **1994**; (ii) that those alleged calls were "loud", "threatening", and "alarming" in nature [TT#2, T. Layne, 10/27/98, 11:19:15, et seq. [See also hereinabove paragraphs E-45 & E-46], and (iii) resulted in Layne taking his family on vacation earlier than planned; and (iv) SCC hiring security guards and installing a new security system. (v) Layne now fraudulently further alleges that Akers had appeared at Southland Christian Church at some time **after** May 4, 1994 [TT#2, T. Layne, 10/27/98, 11:46:50 (**see previous testimony of Layne @ TT#2, 05/21/96, 09:32:35, wherein Layne admits that Akers did not appear at Southland Christian Church after May 4, 1994**)]; together with hereinabove paragraphs E-45, E-46, & E-64)].[111] Upon cross-examination, **Layne admits that he had "never heard [Akers'] side of the story**" [TT#2, T. Layne, 10/27/98, 11:33:50]; and (vi) **Overstreet and Red Corn would not allow the jury to view video tapes of Bishop's activities at Southland Christian Church which would have conclusively shown that any allegations of Bishop's "prolonged" impairment to her...**

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[111] **Footnote [7] [supra, page 13 hereof] is re-stated herein the same as if set forth in its entirety. See also: TITLE 18 U.S.C. § 1512(b)(2) [supra, page 14 hereof]; and TITLE 42 U.S.C. § 1985(2) & (3) [id., pages 16 & 17 hereof].**

[112] **See: K.R.E. 401 [supra, page 40 hereof], i.e., DEFINITION OF "RELEVANT EVIDENCE": "Relevant evidence" means evidence having any tendancy to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."; K.R.E. 402 [id.], i.e., "All relevant evidence is**

admissible, except as otherwise provided by the Constitution of the United States and the Commonwealth of Kentucky, by the acts of the General Assembly of the Commonwealth of Kentucky, by these rules, or..." (continued, page 149...)

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neck were fraudulent [TT#2, T. Layne/M.Radomile/L. Red Corn/R. Overstreet, 10/27/98, 11:37:05, et seq.];[112]

(h) Fleming, under the encouragement, guidance, and/or sanction of Bishop, Red Corn and Overstreet, respectively, committed numerous acts of "fraud"[113] including, **but not limited to**, testimony with respect to Bishop's physical condition, demeanor, and emotional state on the morning of May 5, 1994 [TT#2, D. Fleming, 10/27/98, 13:23:10, et seq.];

(i) Mildred Patrick, under encouragement, guidance, and/or sanction of Bishop, Red Corn, and Overstreet, respectively, committed numerous acts of "fraud"[114] including, **but not limited to**, testimony that: (i) Akers had telephoned her on numerous occasions and "threatened" her and others and that Akers was "gonna do this or gonna do that if [she] didn't tell him where [Bishop] was." [TT#2, M. Patrick, 10/27/98, 13:50:35,

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[112] **K.R.E. 402** (continued from page 148 hereof): "...by other rules adopted by the Supreme Court of Kentucky"; **K.R.E. 404. CHARACTER EVIDENCE AND EVIDENCE OF OTHER CRIMES** [id.]: "**(a) Character Evidence Generally**: Evidence of a persons character is **not admissible** for the purpose of proving action in conformity therewith on a particular occasion, except: (2) *Character of Victim Generally*: Evidence of a pertinent trait of character of the victim of the crime **offered by the accused...; K.R.E. 405. METHODS OF PROVING CHARACTER** [id.], i.e., "**(c) Specific Instances of Conduct**. In cases in which character of a person is an essential element of a charge, claim, or defense, **proof may also be made of specific incidents in that person's conduct**." (emphasis added); and **K.R.S. 500.070 Burden of proof; defenses** [supra, page 31 hereof], i.e., "(2) **No Court can require notice of a defense prior to trial time**." (emphasis added)

[113] **Footnote [7]** [supra, page 13 hereof] is re-stated herein the same as if set forth in its entirety. **See also**: **TITLE 18 U.S.C. § 1512 (b)(2)** [supra, page 14 hereof]; and **TITLE 42 U.S.C. § 1985(2), (3)** [id., pages 16 & 17 hereof];

[114] Footnote [7] [supra, page 13 hereof] is re-stated herein the same as if set forth in its entirety. See also: TITLE 18 U.S.C. § 1512 (b)(2) [supra, page 14 hereof]; and TITLE 42 U.S.C. § 1985(2), (3) [id., pages 16 & 17 hereof];

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et seq.]; but then (ii) **admitted that all such calls "stopped about a month or two before [Akers] went to Minnesota [in May of 1994]"** [TT#2, M. Patrick, 10/27/98, 13:53:55]; (iii) M. Patrick then **fraudulently stated that Akers had "showed up" at her home on two occasions after the "Domestic Violence Order" of May 19, 1994, had been entered**. [TT#2, M. Patrick, 10/27/98, 13:59:00];

(j) Bishop's brother, Wendell Patrick, stated that all offensive and/or alarming telephone calls which he had received from Akers occured on "May 27th or 28th until the end of June [1995]", that is, **after expiration of that "Domestic Violence Order" entered May 19, 1994**. [TT#2, W. Patrick, 10/27/98, 14:07:10, 14:08:10];

(k) **Red Corn fraudulently introduced the video-taped testimony of previous prosecution witness Allen Rushing** (from Akers' first trial in May of 1996) [see TT#2, M. Radomile/L. Red Corn/ R. Overstreet, 10/27/98, 14:36:45, et seq., esp. 15:05:40]; and then **further perpetrated her fraud by playing in excess of seventeen minutes (or 74%) of the unedited version thereof for the jury** [TT#2, A. Rushing, 10/27/98, 15:08:40 through 15:26:40]; and Akers' "Motion for Mistrial" was "**OVERRULED**" [id., 15:28:05, 15:52:20];

(l) Dr. Mark Einbecker testified that: (i) upon his initial examination of Bishop on May 17, 1994, "**her range of motion was intact**" [TT#2, M. Einbecker, 10/27/98, 16:24:25] and that he "wasn't sure if [Bishop] was in **physical pain or emotional pain**" (id., 16:26:40); (ii) that subsequent X-rays revealed "that [Bishop] had some **degenerative arthritis that...was of a long-standing nature**" [id., 10/27/98, ...

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16:27:25]; and (iii) **there was "no doubt in [Dr. Einbecker's] mind that [Bishop] had a 'pre-existing condition' and that that pre-existing condition could have caused [Bishop's] herniated discs"** (id., 10/27/98, 16:33:45); &

(m) Akers' then motions for a "Directed Verdict of Acquittal" on the charge of "First Degree Assault" due to the "insufficiency of the evidence" and "First Degree Stalking" due to "insufficiency of the evidence and lack of jurisdiction" were **"OVERRULED"** [TT#2, M. Radomile/L. Red Corn/R. Overstreet, 10/27/98, 16:34:20, et seq.].

VI. DEFENSE PHASE:

(a) Having **fraudulently portrayed Akers to the jury as a perpetual "drunkard" with an inherent propensity for violence and abuse;**

(b) Having already received a **concise preview of the testimony of Akers' defense witnesses to the contrary** as in hereinabove paragraph E-108, **which were intended solely for the purpose of eliciting a "Writ of Prohibition"** from the Kentucky Court of Appeals to prevent a "repeat" of those atrocities in Akers' first trial in May of 1996;

(c) **and being fully-cognizant that such defense testimony would be devastating to their cases against Akers;**

(d) **Overstreet and Red Corn then jointly and overtly effected the furtherance of their conspiracy to deny Akers a fair trial, and acting in concert one with the other** in clear, distinct, and blatant violation of the **of the Kentucky Rules of Evidence** and of all those **superordinate provisions** of the **United States Constitution, United States Codes Annotated, Constitution of Kentucky,** and **Kentucky Revised Statutes** as are...

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hereinafter enumerated;

(e) **fraudulently supressed[115] relevant, admissible, and essential testimony of all defense witnesses** by intimidating, threatening, hindering, and otherwise impeding their testimony

[116] in that manner as shown in TT#2, **C. Kirby**/M. Radomile/L. Red Corn/R. Overstreet, 10/27/98, 16:56:45, 17:00:00, et seq.; TT#2, **D. R. Akers**/M. Radomile/L. Red Corn/...

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[115] See: "Fraud" defined [footnote [7], supra, page 13 hereof], i.e., "A **false representation of a matter of fact**, whether by words or by conduct, **by false or misleading allegations, or by concealment of that which should have been disclosed**..., by **false suggestions or by suppression of the truth**...; As distinguished from negligence, **it is always positive, intentional**. It comprises **all acts, omissions, and concealments** involving a breach of a legal **or equitable duty and resulting in damage to another**. And includes **anything calculated to deceive**, whether it be a single act **or combination of circumstances**, whether the **suppression of truth or the suggestion of what is false**, whether it be direct falsehood or by inuendo, by speach or **by silence**, by word of mouth, **or by look or gesture**." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]

[116] See: **Footnote [81]** [supra, page 102, 104, & 105 hereof] is re-stated herein the same as if set forth in its entirety. See also: **K.R.E. 401** [supra, page 40 hereof], i.e., **DEFINITION OF "RELEVANT EVIDENCE"**: "Relevant evidence" means evidence having any tendancy to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."; **K.R.E. 402** [id.], i.e., "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States and the Commonwealth of Kentucky, by the acts of the General Assembly of the Commonwealth of Kentucky, by these rules, or by other rules adopted by the Supreme Court of Kentucky"; **K.R.E. 404. CHARACTER EVIDENCE AND EVIDENCE OF OTHER CRIMES** [id.], i.e., "**(a) Character Evidence Generally**: Evidence of a persons character is **not admissible** for the purpose of proving action in conformity therewith on a particular occasion, except: (1) *Character of accused*: Evidence of a pertinent trait of character or of the general moral character **offered by the accused** ...; (2) *Character of Victim Generally*: Evidence of a pertinent trait of character of the victim of the crime **offered by the accused**..." (emphasis added); and **K.R.E. 405. METHODS OF PROVING CHARACTER** [id.], i.e., "**(a) Reputation or opinion.** In all cases in which evidence or a trait of character of a person is admissible, proof **may be made** by testimony as to general reputation in the community or by testimony **in the form of opinion**. **(c) Specific Instances of Conduct**. In cases in which character of a person is an essential element of a charge, claim, or defense, **proof may also be made of specific incidents in that person's conduct**." (emphasis added)

R. Overstreet, 10/27/98, 17:14:30, 17:16:20, 17:22:00, 17:22:15, 17:22:30, 17:29:30, 17:31:40, & 17:31:55; TT#2, **A. P. Akers**/M. Radomile/L. Red Corn/R. Overstreet, 10/27/98, 16:56:45, et seq., 18:02:30, 18:06:30; TT#2, **A. W. Akers**, 19:11:40, et seq.; TT#3, W. E. Akers, 09:30:00, 09:38:00, **esp. 09:38:30**, 09:39:45, 09:42:25 & 09:52:35; TT#3, **D. L. Harvil**, 10/28/98, 09:55:15, 10:00:15, 10:03:25, 10:03:50, 10:09:30; and TT#3, **J. G. Akers**, 13:20:00, 13:21:00, 13:32:30, 13:32:45, 13:44:00, 13:49:10, and **more specifically including, but not limited to**: (i) Overstreet and Red Corn suppressed the testimony of Akers' brother, Dennis R. Akers, ***et al***, with respect to specific incidents of Akers' conduct which was **clearly relevant and amissible pursuant to K.R.E. 401, 402, 404(a)(1) & (2), 405(c)**; and (ii) Overstreet, upon the objection and argument by Red Corn, instructed defense witness, Deborah L. Harvil, and **several** defense witnesses that they "**[could not] testify as to anything that was said by anyone other than [Bishop]**" **(e.g., about Bishop's pre-xisting neck/back condition), or with respect to Akers' emotional state during the period of time of the alleged "stalking"**; &

(f) Overstreet and Red Corn would not allow the jury to see video tapes of Bishop's activities at Southland Christian Church which would have shown that allegations of Bishop's "prolonged" impairment to her neck as the result of any conduct of Akers were fraudulent[117] [TT#2, T. Layne/M.Radomile/L. Red Corn/R. Overstreet, 10/27/98, ...

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[117] **Hereinabove footnote [116]** is re-stated herein the same as if set forth in its entirety.

11:37:05]; &

(g) **Overstreet and Red Corn suppressed the introduction of Akers' telephone records encompassing the entire period of time of the alleged stalking and beyond**[118] and which prove that **Fayette [Kentucky] Circuit Court did not, in fact, have either "'personal' or 'subject matter' jurisdiction" over Akers with respect to any "stalking" charge** [TT#3, J. G.

Akers, M. Radomile/L. Red Corn/R. Overstreet, TT#3, 14:20:25, 14:21:30, 14:22:00, & 15:04:30].

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[118] **Hereinabove footnote** [116] is re-stated herein the same as if set forth in its entirety. **See also**: **K.R.S. 500.070 Burden of proof; defenses** [supra, page 32 hereof], i.e., "(2) No Court can require notice of a defense **prior to trial time**." (emphasis added); **UNITED STATES CONSTITUTION**: **ARTICLE I - SECTION 9** [supra, page 5 hereof], i.e., "[1.] The **migration** or importation of such persons as any of the states...shall think proper to admit, **shall not be prohibited**...; [3.] "No bill of attainer or ***ex post facto*** **law** shall be passed." (emphasis added); **ARTICLE I-SECTION 10** [id], i.e., "[1.] **No state shall...pass any** bill of attainer, ***ex post facto*** **law**, or law impairing the obligation of contracts, or grant any title of nobility." (emph. added); corresponding footnote [1] "**Ex post facto law" defined**: "A law passed **after the occurrence of a fact or commission of an act**, which retrospectively changes the legal consequences or relations of such fact or deed. A law is **unconstitutionally** **"ex post facto"** if it deprives a defendant of a defense to criminal liability that he had prior to enactment of the law. State v. Rogers, Ohio Com.Pl., 346 N.E.2d 352, 361. Art. I, § 9(CL3) and § 10 of U.S. Const. prohibit both Congress and the states from passing any ex post facto law. An ex post facto law is defined as a law which provides for the infliction of punishment upon a person for an act done which, when it was committed, was innocent; **a law which aggravates a crime or makes it greater than when it was committed**; **a law that changes the punishment or inflicts a greater punishment than the law annexed to the crime when it was committed**; **a law that changes the rules of evidence** and receives less or different testimony than was required at the time of the commission of the offense in order to convict the offender; **a law which deprives persons accused of a crime of some lawful protection to which they have become entitled**, such as protection of a former conviction or acquittal...; **every law which**, in relation to the offense or consequences, **alters the situation of a person to his disadvantage**. Wilensky v. Fields, Fla., 267 So.2d 1, 5." [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998 (emph. added)]; **ARTICLE IV-SECTION 2** [id.], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states"; [2.] "A person charged **in any state** with...felony, or other crime, **who shall flee from justice**, and be found in another state,..." (continued, page 155 hereof)

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[118] **ARTICLE IV-SECTION 2** (cont'd from page 154 hereof): "...shall be delivered up, to be removed to the state having jurisdiction of the crime." (emphasis added) and corresponding footnote [2], i.e., "**Interstate extradition** involves a significant restraint of liberty and, as such, **necessitates a showing**

of probable cause." Wellington v. State of S.D., D.C.S.D.1976, 413 F.Supp., 151. (emphasis added); Walton v. State, 1977, 566 P.2d 765, 98 Idaho 422; "Probable cause to find that a person to be extradited is a fugitive from justice in demanding state is a condition precedent to valid extradition." Ross v. Hegstrom, 1969, 254 A.2d 556, 107 Conn. 403 (emphasis added); "In determining whether a party named in a requisition and rendition warrant is a fugitive from justice, a finding must be made in substance that a crime is alleged, that the named party committed the crime and fled from the demanding jurisdiction, and it must appear that accused was within the demanding state when crime was committed so as to constitute him a fugitive by his commission of crime and his later flight." State v. Phillips, 1960,162 A.2d 113, 62 N.J.Super. 70, affirmed 167 A.2d 175, 34 N.J. 63 (emphasis added); "In extradition proceedings, inquiry is restricted to whether accused is substantially charged with crime in the demanding state, and whether he was physically in the demanding state at time crime charged is alleged to have been committed." People v. ex rel. Johnson v. Ruthazer, 1951, 102 N.Y.S.2d 39, 198 Misc. 1044, affirmed 105 N.Y.S.2d 394, 278 App.Div. 905 (emphasis added); Clayton v. Wichael, 1966, 141 N.W. 2d 538, 258 Iowa 1037; Wigehert v. Lockhart, 1946, 166 P.2d 988, 114 Colo. 485; Ex parte Foster, 1936, 61 P.2d 37, 60 Okla.Cr. 50; "No person may be lawfully removed from one state to another by virtue of this [Sec. 2, cl. 2], unless ...; 2. He has fled from justice; ..., and if either of these conditions are absent, the Constitution affords no warrant for a restraint of the liberty of any person." Pierce v. Creecy, Mo. 1908, 28 S.Ct. 714, 210 U.S. 387, 52 L.Ed. 1113; Ex parte Morgan, D.C.Cal. 1948, 78 F.Supp. 756, affirmed 175 F.2d 404, certiorari denied 70 S.Ct. 76, 338 U.S. 827, 94 L.Ed. 503; "Under this [Sec. 2, cl. 2] and Federal Extradition Act, 18 U.S.C.A. former § 662 [now §§ 3182, 3195], an extradition is unwarranted unless the accused is a fugitive from justice, and a 'fugitive from justice' is a person who commits a crime within a state and withdraws himself from such jurisdiction without waiting to abide the consequences of his act". Ex parte Montoya, 1943, 135 P.2d 281, 170 Or. 499. (emphasis added); FIRST AMENDMENT [id, page 7 hereof], i.e., "Congress shall make no law respecting...religion, or prohibiting the free exercise thereof; or abridging freedom of speech..."; (emphasis added); FOURTH AMENDMENT [id.], i.e., "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause" (emph. added); SIXTH AMENDMENT [id., page 8 hereof], i.e., "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State...wherein the crime shall have been committed..."; (emphasis added); FIFTH AMENDMENT [id.], i.e., "No person shall be held to answer for ...infamous crime...nor be deprived of... liberty, or property, without due process of law" (emphasis added) and corresponding footnote [5] "Due process of law" defined: "Law in its regular course of administration through courts of justice. ...Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgement upon the question of life, liberty, or property, in its most comprehensive sense; ..." (continued, page 156 hereof)

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[118] **FOURTH AMENDMENT** (continued from page 155 hereof): "...to be heard, by testimony or otherwise, and to have the right of controverting every material fact which bears on the question of right in the matter involved. **If any question of fact or liability be conclusively presumed against him, this is not due process of law**. An orderly proceeding wherein a person is **served with notice**, actual or constructive, and **has an oppor-tunity to be heard and to enforce and protect his rights** before a court having power to hear and determine the case. ...**The concept of 'due process of law' as it is embodied in the Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious**... U. S. v. Smith, D.C. Iowa, 249 F.Supp. 515, 516. Fundamental requisite of 'due process' is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest... Trinity Episcopal Corp. v. Romney, D.C.N.Y., 387 F.Supp. 1044, 1084. **Aside from all else, 'due process' means fundamental fairness and substantial justice**. Vaughn v. State, 3 Tenn. Crim. App. 54, 456 S.W.2d, 879, 883. Embodied in the due process concept are the basic rights of a defendant in criminal cases and the requisites for a fair trial. These rights and requirements have been expanded by Supreme Court decisions and include, timely notice of a hearing or trial which informs the accused of the charges against him or her; **the opportunity to confront accusers and to present evidence on one's own behalf before an impartial jury or judge**; the presumption of innocence under which **guilt must be proven** by legally obtained evidence and **the verdict must be supported by the evidence presented**; ...and **the guarantee that an individual will not be tried more than once for the same offense (double jeopardy)**." [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998 (emphasis added)]; **FOURTEENTH AMENDMENT** [id., page 10 hereof], i.e., "**All persons** born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens of the United States** and of the **State wherein they reside**. **No State** shall make or enforce **any law** which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny any **person within its juris-diction equal protection of the laws**" (emphasis added); **TITLE 18 U.S.C. § 2261. Interstate domestic violence**: (a) **Offenses. - (1) Crossing a State Line.**- [supra, page 15 hereof], i.e., "A person who **travels** across a State line...**with intent** to injure, harass, or intimidate that person's spouse or intimate partner, **and** who, in the course of or as a result of such travel, **intentionally commits a crime of violence and thereby causes bodily injury** to such spouse or intimidate partner, shall be punished as provided in subsection (b)." (emphasis added); **TITLE 18 U.S.C. § 2261A. Interstate stalking** [id.], i.e., "Whoever **travels** across a State line or within the... territorial jurisdiction of the United States **with the intent** to injure or harass another person, **and** in the course of, or as a result of, **such travel** places that person in reasonable fear of the death of, or serious bodily injury (as defined in section 1365(g)(3) of this title) to, that person or a member of that person's immediate family (as defined

in section 115 of this title) shall be punished as provided in section 2261 of this title." (emph. added); **TITLE 18 U.S.C. § 2262. Interstate violation of protection order. (a) Offenses. - (1) Crossing a State line. -** [id., pages 15 & 16 hereof], i.e., "A person who travels across a State line...with the intent to engage in conduct that - **(A)(i)** violates the portion of a protective order that involves protection against credible..." (continued, page 157 hereof)

VIII. JURY INSTRUCTIONS:

(a) Overstreet fraudulently and unconstitutionally instructed the jury as to the definition of "dangerous instrument", i.e., "hands and feet" as "dangerous instruments". [see TT#4, R. Overstreet, 10/28/98, 15:58:30][119]

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[118] **TITLE 18 U.S.C. § 2262** (continued from page 156 hereof): "...threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued; or (ii) would violate this paragraph if the conduct occurred in the jurisdiction in which the order was issued; **and (B) subsequently engages in such conduct**, shall be punished as provided in subsection (b)." (emph. added); **TITLE 18 U.S.C. § 2265. Full faith and credit given to protection orders: (a) Full faith and credit. -** [id.], i.e., "Any protection order issued **that is consistent with subsection (b) of this section** by the court of one State...(the issuing State...) shall be accorded full faith and credit by the court of another State ...(the enforcing State ...) and enforced as if it were the order of the enforcing State...(b) Protection order. - A protection order issued by a State...**is consistent with this subsection if-** (1) such court has **jurisdiction over the parties** and matter under the law of such State...; **and** (2) **reasonable notice and opportunity to be heard is given** to the person against whom the order is sought sufficient **to protect that person's right to due process**. In the case of ex parte orders, **notice and opportunuty to be heard must be provided** within the time required by State...law, and **in any event within a reasonable time** after the order is issued, sufficient **to protect respondent's due process rights**." (emphasis added); **CONSTITUTION OF TENNESSEE: ARTICLE 1, SECTION 3. Freedom of worship** [supra, page 18 hereof], i.e., "That all men have a natural and indefeasable right to worship Almighty God to the dictates of their own conscience; **that no human authority can, in any case whatsoever, control or interfere with the rights of conscience.**" (emphasis added); **ARTICLE 1, SECTION 8. No man to be disturbed by law** [id.], i.e., "That **no man shall be taken or imprisoned, or disseized of his free-hold, liberties or privileges**, outlawed, **or exiled or in any manner destroyed or deprived of his life, liberty, or property, but by the judgement of his peers or the law of the land**." (emph. added); **Ky Const § 1 [page 26 hereof], i.e., "Rights of life,**

liberty, worship, pursuit of safety and happiness, free speech, acquiring and protecting property, ...redress of grievances, bearing arms: "**All men** are, by nature, free and equal, and **have certain inherent and inalienable rights**, among which may be reckoned: ... **Second**: The right of worshipping Almighty God **according to the dictates of their consciences**; ...**Fourth**: The right of **freely communicating their thoughts and opinions** (emph. added); and **T.C.A. 39-17-308. Harassment.** - [id., page 21 hereof], i.e., "(a) A person commits an offense who **intentionally**: (2) **Places one (1) or more telephone calls ...in an offensively repetitous manner, or without a legitimate purpose of communication, and by this action knowingly annoys or alarms the recipient**; (b) **A violation of this section is a Class A misdemeanor**." (emphasis added)

[119] See: **K.R.S. 508.010** [supra, page 34 hereof] and footnote [36] thereto.

IX. CLOSING ARGUMENTS:

(a) Red Corn, under the sanction of Overstreet, intentionally and fraudulently "tampered with the jury" with respect to the probative value, admissibility, and relevance of Akers telephone calls in hereinabove paragraphs E-65 through E-68, and E-110.V(c), (g), (i), & (j) by **suppressing Radomile's correctly stated closing arguments that such evidence should not be considered** as proof with respect to Akers' guilt on the "stalking" charge, **especially inasmuch as Overstreet again refused to properly admonish the jury** in accordance with the hereinabove **"Opinion"** by the Kentucky Court of Appeals in reversing Akers' first conviction. [TT#4, M. Radomile/L. Red Corn/R. Overstreet, 10/28/98, 16:29:20, et seq.][120];

(b) Red Corn intentionally "tampered with the jury" by fraudulently asserting that "**the instructions are the law**", **notwithstanding that the same were both fraudulent and unconstitutional**.[121] [TT#4, L. Red Corn, 10/28/98, 17:03:20];

(c) Red Corn fraudulently "tampered...

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[120] See hereinabove paragraph E-96(c) and footnote [102] thereto; hereinabove paragraph E-104 and footnote [105] thereto; and **TITLE 42 U.S.C. § 1985** [supra, page 16 hereof] and footnotes [10], [11], [12] thereto [id, page 17 hereof]

[121] See: "Fraud" defined [footnote [7], supra, page 13 hereof], i.e., "A **false representation of a matter of fact**, whether by words or by conduct, **by false or misleading allegations, or by concealment of that which should have been disclosed**..., by **false suggestions or by suppression of the truth**...; As distinguished from negligence, **it is always positive, intentional**. It comprises **all acts, omissions, and concealments** involving a breach of a legal **or equitable duty and resulting in damage to another**. And includes **anything calculated to deceive**, whether it be a single act **or combination of circumstances**, whether the **suppression of truth or the suggestion of what is false**, whether it be direct falsehood or by inuendo, by speach or **by silence**, by word of mouth, **or by look or gesture**." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]; **K.R.S. 508.010** [supra, page 34 hereof] and footnote [36] thereto; **U.S. CONSTITUTION**: ..." (continued, page 159 hereof)

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with the jury" by asserting her fraudulent and unconstitutional definition of "hands and feet" as "dangerous instruments".[122] [TT#4, L. Red Corn, 10/28/98, 17:05:10];

(d) Red Corn further intentionally and fraudulently misled the jury with respect to the definition of "intentionally" as an element of "First degree assault" [TT#4, L. Red Corn, 10/28/98, 17:05:10]; (e) Red Corn intentionally and fraudulently misled the jury with respect to the definition of "intentionally" as an element of "First degree assault" [TT#4, L. Red Corn, 10/28/98, 17:08:10];

(f) Red Corn...

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[121] **U.S. CONSTITUTION**: (continued from page 158 hereof): "... **ARTICLE I-SECTION 10** [id], i.e., "[1.] **No state shall...pass any** bill of attainer, ***ex post facto* law**, or law impairing the obligation of contracts, or grant any title of nobility." (emphasis added); corresponding footnote [1] **"Ex post facto law"** defined: "A law passed **after the occurrence of a fact or commission of an act**, which retrospectively changes the legal consequences or relations of such fact or deed. A law is **unconstitutionally "ex post facto"** if it deprives a defendant of a defense to criminal liability that he had prior to enactment of the law. State v. Rogers, Ohio Com.Pl., 346 N.E.2d 352, 361. Art. I, § 9(CL3) and § 10 of U.S. Const. prohibit both Congress and the states from passing any ex post facto law. An ex post facto law is defined as a law which provides for the infliction of punishment upon a person for an act done which, when it was committed, was innocent; **a law which aggravates a crime or makes it greater than when it was**

committed; a law that changes the punishment or inflicts a greater punishment than the law annexed to the crime when it was committed; a law that changes the rules of evidence and receives less or different testimony than was required at the time of the commission of the offense in order to convict the offender; **a law which deprives persons accused of a crime of some lawful protection to which they have become entitled**, such as protection of a former conviction or acquittal ...; **every law which**, in relation to the offense or consequences, **alters the situation of a person to his disadvantage**. Wilensky v. Fields, Fla., 267 So.2d 1, 5." [Black's Law Dictionary, Sixth Edition, 12th Reprint-1998 (emph. added)]; **ARTICLE IV-SECTION 2** [id.], i.e., "[1.] The citizens of each state shall be entitled to **all privileges and immunities** of citizens in the several states" (emph. added); and **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights** [supra, page 16 hereof] and footnotes [10, 11, 12] thereto [id, page 17 hereof]

[122] Hereinabove footnote [121] is re-stated herein the same as if set forth in its entirety. See also: **K.R.S. 508.010** [supra, page 34 hereof] and corresponding footnote [36] thereto.

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intentionally and fraudulently misled the jury with respect to the definition of "serious physical injury"[123] and the "causative connection" as elements of Akers' "First degree assault" charge. [TT#4, L. Red Corn, 10/28/98, 17:21:45, et seq.];

(g) Red Corn intentionally and fraudulently misled the jury with respect to the definition of "Assault in the first degree"[124] [TT#4, L. Red Corn, 10/28/98, 17:23:10, et seq.];

(h) Red Corn intentionally and fraudulently confused the jury with respect to the charges for which Akers was on trial by making references to fraudulent "subsequent/other bad acts" alleged to have been committed by Akers and which, **even had they been true, would have been completely irrelevant** to Akers' indicted charge of "First degree stalking"[125] [TT#4, L. Red Corn, 10/28/98, 17:31:05, et seq.];

(i) Red Corn further capitalized on her fraudulent introduction of evidence as detailed in hereinabove paragraph E-31 and E-110.V(c)(1) and corresponding footnote [108], and then fraudulently misrepresenting the facts with respect thereto [TT#4, L. Red Corn, 10/28/98, 17:35:25, et seq.]; and

(j) Red Corn intentionally and fraudulently misled the

jury with respect...

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[123] Hereinabove footnote [121] is re-stated herein the same as if set forth in its entirety. See also: K.R.S. 508.030 [supra, page 34 hereof] and corresponding footnote [37] thereto.

[124] Hereinabove footnote [121] is re-stated herein the same as if set forth in its entirety. See also: K.R.S. 508.010 [supra, page 34 hereof] and corresponding footnote [36] thereto.

[125] Hereinabove footnote [121] is re-stated herein the same as if set forth in its entirety. See also: K.R.S. 508.140 [supra, page 34 hereof] and corresponding footnote [38] thereto.

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to the time period "First Degree stalking" charge **in violation of the doctrines of *res judicata* and/or double jeopardy** [TT#4, L. Red Corn, 10/28/98, 17:44:50.

X. PENALTY PHASE:

(a) Red Corn, under sanction of Overstreet, "tampered with the jury" by, ***inter alia***, misleading them with respect to "parole eligibility" guidelines [TT#4, L. Red Corn/R. Overstreet, 10/28/98, 18:30:00]; and

(b) Red Corn, with the guidance and sanction of Overstreet, fraudulently introduced evidence to the jury to the effect that Akers had previously been convicted of "Assault in the first degree" [TT#4, L. Red Corn/R. Overstreet, 10/28/98, 18:31:20] and, thereby, further "tampered with the jury" with an overt attempt to improperly influence the jurors with respect to Akers' sentencing.[126]

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[126] See: **"Tampering with jury"** (footnote [8] hereof), i.e., "...The act of attempting to influence a juror corruptly by...persuasions, entreaties, ...or **any other means except the production of evidence in open court**. *See e.g.* 18 U.S.C.A § 1503, 1504." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988

(emphasis added)]. See also: "Tamper" (footnote 9 hereof): "To meddle so as to alter a thing, especially to make illegal, **corrupting or perverting changes**" [id.]; **K.R.E. 103. RULINGS ON EVIDENCE** [supra, page 39 hereof], i.e., "(c) **Hearing of Jury. In jury cases, proceedings shall be conducted**, to the extent practicable, **so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements** or offers of proof or asking questions **in the hearing of the jury**." (emphasis added); **K.R.E. 404. CHARACTER EVIDENCE AND EVIDENCE OF OTHER CRIMES**: "**(a) Character Evidence Generally** [id., page 40 hereof], i.e., **Evidence of a persons character is not admissible** for the purpose of proving action in conformity therewith on a particular occasion, **except**: (1) *Character of accused*: Evidence of a pertinent trait of character or of the general moral character **offered by the accused**...; **(b) Other Crimes, Wrongs, or Acts**. Evidence of other crimes, wrongs, or acts **is not admissible** to prove the character of a person in order to show action in conformity therewith. ...**(c) Notice Requirement**. In a criminal case, if the prosecution intends to introduce evidence pursuant to subdi-vision (b) of this rule as a part of its case in chief, it **shall give reasonable**..." (continued, page 162 hereof)

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111. On October 28, 1998, Akers was **again** convicted in the Fayette Circuit Court on one (1) count each of "First Degree Assault" and "First Degree Stalking", as indicted, and the jury then recommended sentences of ten (10) years and one (1) year, respectively, **to be served concurrently**, for a total sentence of ten (10) years imprisonment.

112. (a) November 23, 1998, **Akers was again haled before Overstreet for "Final Sentencing"** [see Exhibit "WWW" hereto]; (b) Akers' "Motion to Proceed Pro Se", and "Motion for Mistrial/New Trial" pursuant to [the Kentucky Rules of Court] **CR 59.03, K.R.E. 401** in conjunction with **K.R.E. 402** and **K.R.E. 404(2)**" were "**OVERRULED**" by Overstreet [CP#1, R. Overstreet, 11/23/98, 10:17:15, et seq.]; (c) Overstreet then imposed **her "final sentence" of ten years for Count One (i.e., "First degree assault" and one year for Count Two (i.e., "First degree stalking")**, respectively, **to be served concurrently** [CP#1, R. ...

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[126] **K.R.E. 404(b)** (continued from page 161 hereof): "... **pretrial notice to the**

defendant of its **intention** to offer such evidence. **Upon failure of the prosecution to give such notice the court may** exclude the evidence offered under subdivision (b) or for cause shown may excuse the failure to give such notice and **grant the defendant a continuance or such other remedy as necessary to avoid unfair prejudice caused by such failure.**" (emph. added); **K.R.E. 1101. APPLICABILITY OF RULES** [id.], i.e., "**(a) Courts**. These rules apply to **all the courts of this Commonwealth in the actions, cases, and proceedings** and to the extent herein-after set forth. ...**(c) Rules on Privileges**. The rules with respect to **privileges apply at all stages of all actions, cases, and proceedings**." (emphasis added); **in conjunction with U.S. Const. Amend. 5** [supra, page 7 hereof], i.e, "No person shall...**be deprived of**...**liberty**, or property, **without due process of law.**" (emphasis added); **and U.S. Const. Amend. 14** [id., page 10 hereof], i.e., "**No State** shall...deprive **any person of life, liberty, or property, without due process of law**." (emphasis added); **and TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights** [supra, page 16 hereof] and footnotes [10, 11, 12] thereto [id, page 17 hereof].

Overstreet, 11/23/98, 10:16:29, et seq.], stating as her reasons therefor, that: (i) "the court believes there is a substantial risk that [Akers] would commit another crime"; (ii) "due to [Akers] prior record"; (iii) "due to [Akers'] 'alcoholism'; (iv) "due to [Akers] position of trust **at time of the trial** (sic) **crime**"; (v) "due to the violent..., dangerous..., deliberate nature of the crime"; & (vi) "due to what the court perceives as a very 'anti-social attitude'"[127]; and (d) **again denied Akers' "Motion for Bail on Apeal" in the amount of "$7,500 Full Cash"** as in hereinabove paragraphs E-82, E-83 & corresponding footnote [82] thereto, E-90 & corresponding footnote [95] thereto, E-92, E-93, E-96, E-99 & corresponding footnote [103] thereto. [CP#1, J. Akers/M. Radomile/R. Overstreet, 11/23/98, 10:16:29, et seq.]

113. **Having been denied any "Bail on Appeal" by Overstreet** [see hereinabove paragraph E-113(d)]; (a) on January 18, 1998, Akers filed his "Application for Bond Pending Appeal" [Exhibit "XXX" hereto] with the Kentucky Court of Appeals pursuant to **RCr 12.82** citing substantial bases for the granting thereof including, **but not limited to**: (i) that **[Overstreet] had, for all intents and purposes, ignored the Court of Appeals Opinion which reversed Akers' prior convictions** for the same charges and under the same indictment [id., paragraphs 1 thru

4]; (ii) that...

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[127] Overstreet's allegations are simply not suppported by the facts, and further demonstrate all of Akers' hereinabove assertions with respect to, *inter alia*, Overstreet's bias, tyranny, and oppression. See also: U.S. Const. Amendment 14 [id., page 10 hereof]; and, *inter alia*, hereinabove paragraphs E-82 through E-86, E-90, E-94 through E-98, E-104, E-108 through E-112 together with the hereinafter paragraphs E-119 through E-123.

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there was a "substantial liklihood" that Akers' conviction for "First Degree Assault" would again be reversed as a result of Overstreet's such acts of contempt [id., paragraphs 5 & 6]; (iii) that there was a "real possibility" that Akers had already served in of excess any sentence which would likely stand [id., parapraph 7]; (iv) that Akers' prior criminal record was all but negligable [id., paragraph 8]; (v) there was no evidence whatsoever to allege or suspect that Akers would be a threat to anyone [id., paragraphs 9 & 10]; and (vi) there was no basis to allege or even suspect that Akers would fail to appear at any court proceedings [id., paragraph 11].

114. On March 8, 1994, Akers' said "Application for Bond Pending Appeal" [Exhibit "XXX"] was "DENIED" by the Kentucky Court of Appeals for no stated reasons [Exhibit "YYY" hereto].

115. On July 30, 1999, the Assistant Attorney General for Kentucky, Todd D. Ferguson (hereinafter "Ferguson"), performed his "chain-like" function[128] in furtherance of those conspiracies as outlined in hereinabove paragraphs A-2, A-3(f), E-12 thru E-14, E-16, E-24, E-35, E-36, E-38, E-40 thru E-45, E-47 thru E-49, E-50(a), (d), (e), & (f), E-56(a), (b), & (e), E-61, E-64 thru E-67, E-72 thru E-77, E-81 thru E-96, E-99, E-103, E-104, E-107, E-108, E-110 thru E-115, together with all corresponding footnotes thereto, by filing and serving his "Brief for Appellant" [Exhibit "ZZZ"], and attempting to...

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[128] See: TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights [supra, page 16 hereof] and footnotes [10], [11], & [12] thereto [id, page 17 hereof]

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mislead the Kentucky Court of Appeals in presenting **totally unfounded, unsupported, and/or outright fraudulent** "Counter-statements of Facts" including, **but not limited to**:

(a) that "[Akers] grabbed [Bishop] by the hair of the head and began hitting and kicking her. He dragged her by the hair into the hall, where he threw her against the wall and continued to hit her in the face and kick her legs. The impact of her head as it hit the wall caused an indention the size of a basketball in the drywall." [page 2, lines 7 thru 11; page 11, lines 21 thru 25] "[Bishop's] lip was busted swollen and bleeding." [id, lines 15 & 16];

(b) "Prior to the assault of May 4, 1994, Bishop had no history of neck or back problems." [page 5, lines 4 & 5; Page 11, lines 26 thru 29];

(c) "...it was [Dr. Vaughn's] expert medical opinion that [Bishop's] disks [had] ruptured as a result of the incident that occurred on May 4, 1994." [id, lines 14 & 15];

(d) In early June [1994], ...[Akers] began calling Bishop at work, calling her parents, her priest, her divorce attorney, her two brothers, and her boss." [id, lines 19 thru 21];

(e) "...evidence concerning the events that transpired on May 4, 1994, together with medical evidence...was sufficient to establish that [Akers'] intentional acts caused Bishop to suffer a 'serious physical injury' [page 12, line 23 thru page 13, line 3]; "II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ADMITTING INTO EVIDENCE [AKERS' ALLEGED] PRIOR ACTS OF VIOLENCE AND ABUSE OF BISHOP" [id, lines 3 thru 7];

(f) "Here, in the original appeal, [the Kentucky Court of Appeals] held...

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that the prior bad acts evidence was relevant and probative with regard to the stalking charge." [page 17, lines 7 & 8];

(g) "...the evidence of acts which occurred after expiration of the DVO in May 1995, ...were admissible as evidence of KRE 404(b) to show intent." [id., lines 18 thru 21];

(h) "The trial court did not abuse its discretion in allowing said evidence in at trial." [page 18, lines 7 & 8]; and

(i) "The doctrine of law of [this] case would seem to preclude [Akers] from arguing on retrial that the two charges should have been severed (sic)." [page 22, lines 17 thru 19].[129]

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[129] See: **TITLE 18 U.S.C. § 1503. Influencing or injuring officer or juror generally** [supra, page 13 hereof], i.e., "(a) Whoever **corruptly...endeavors to influence or impede any** grand or petit juror, or **officer in or of any court of the United States**, ...**or endeavors to influence, obstruct, or impede, the due administration of justice**, shall be punished as provided in subsection (b)." (emph. added); **TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights**: [id., page 16 hereof], i.e., "**Every person** who, **under color of any statute**, ordinance, custom, or usage, **of any State** or Territory or the District of Columbia, **subjects, or causes to be subjected, any citizen of the United States** or other person within the jurisdiction thereof **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" (emphasis added); **TITLE 42 U.S.C. § 1985. Conspiracy to interfere with civil rights** [id.] (2) If **two or more persons in any State** or Territory or the District of Columbia **conspire**...for the purpose of impeding, hindering, obstructing, or defeating, **in any manner, the due course of justice in any State or Territory, with the intent to deprive any citizen...equal protection of the laws**, or to injure him or his property for lawfully enforcing, or **attempting to enforce**, the right of any person, or class of persons, to the equal protection of the laws; (3) ...**in any case of conspiracy** set forth in this section, **if one or more persons** engaged therein **do, or cause to be done, any act in furtherance of the object of such conspiracy**, whereby another is injured in his person **or property, or deprived of having and exercising any right or privilege** of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against one or more of the conspirators." (emphasis added); and **"Fraud"** defined: "...A generic term, embracing all multifarious means which human ingenuity can devise, ...**to get advantage over another by false suggestions** or **by suppression of the truth**. ..." (continued, page 167 hereof)

116. **Having again been denied any form of bail on appeal,**[130] on June 22, 1999, Akers filed his petition for "Writ of Habeas Corpus" with the United States District Court, Eastern District of Kentucky, citing substantial grounds for issuance thereof and immediate release thereon. [see Exhibit "AAAA" hereto]

117. On August 30, 1999, Ferguson continued in his "chain-like" function in furtherance of those conspiracies as outlined in hereinabove paragraphs A-2, A-3(f), E-12 thru E-14, E-16, E-24, E-35, E-36, E-38, E-40 thru E-45, E-47 thru E-49, E-50(a), (d), (e), & (f), E-56(a), (b), & (e), E-61, E-64 thru E-67, E-72 thru E-77, E-81 thru E-96, E-99, E-103, E-104, E-107, E-108, and E-110 thru E-115, and with all corresponding footnotes thereto, by filing and serving his "Answer and Response..." thereto [see Exhibit "BBBB"], and fraudulently asserting[131], ***inter alia***, that:

(a) "A state prisoner has no absolute federal right to bail pending appeal." [page 4, "Memorandum of Law", lines 2 & 3]; and

(b) "...the trial court exercised its sound discretion in...

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[129] "Fraud" defined (continued from page 166 hereof): "... As distinguished from negligence, **it is always positive, intentional**. It comprises **all acts, omissions, and concealments** involving a breach of a legal **or equitable duty and resulting in damage to another**. And includes **anything calculated to deceive**, whether it be a single act **or combination of circumstances**, whether the **suppression of truth or the suggestion of what is false**..." [Black's Law Dictionary, Abridged Sixth Edition, 8th reprint-1988]

[130] See hereinabove paragraphs E-90 and corresponding footnote [95] thereto, E-92, E-93, E-99 and corresponding footnote [103] thereto, E-113(d), and E-114.

[131] Hereinabove paragraph E-90 together with corresponding footnote [96] thereto are re-stated herein the same as if set forth in their entirety. See also: **Ky Const 15. Laws to be suspended only by General Assembly** [supra, page 27 hereof], i.e., "**No power to suspend laws shall be exercised unless by the General Assembly or its authority.**" (emphasis added)

denying [Akers] bail on appeal and **it cannot be said that the trial court abused its discretion."**[132] [id., lines 9 thru 11].

118. (a) On April 13, 2000, Akers was transported back to "Domestic Relations/Domestic Violence Division" of Fayette [Kentucky] District Court for the **ludicrous purpose of, once again, allowing Bishop to be granted yet another three-year "extension"** of that "Domestic Violence Order" as detailed in hereinabove paragraphs E-32, E-38, & E-65. (b) Notwithstanding Akers **clearly-stated eternal willingness to have "no contact or communication" with Bishop and "to remain as far away from her as possible (i.e., in a different state)"**; & (c) Akers' **simple request** that the **"CAUTION: 'Weapon involved' [and] 'Believed to be armed/dangerous'" be deleted therefrom**; (d) Fayette District Judge Pamela D. Goodwine nevertheless **issued Bishop's requested "Domestic Violence Order" effective through April 13, 2000** [see Exhibit "CCCC" hereto], **and ignored Akers' pleas** to not further "defame [his] character" and "endanger [his] safety" by alleging those "Cautions" detailed in hereinabove subparagraph (c).[133]

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[132] **See (in stark contrast)**: Hereinabove paragraphs E-82 through E-86, E-90, E-94 through E-98, E-104, E-108 through E-113 together with all corresponding footnotes thereto, respectively; and hereinafter paragraphs E-121 through E-125 together with all corresponding footnotes thereto, respectively.

[133] Hereinabove paragraph E-90 together with corresponding footnote [96] thereto are re-stated herein the same as if set forth in their entirety. **See also: ARTICLE I-SECTION 9, U.S. Constitution** [supra, page 6 hereof] and footnote [1] thereto; **U.S. Const. Amend. 5** [supra, page 6 hereof]; **U.S. Const. Amend. 14** [supra, page 10 hereof]; **ARTICLE 1, SECTION 8, Constitution of Tennessee** [supra, page 18 hereof]; **Ky Const 19** [supra, page 28 hereof]; **Ky Const 24** [id.]; **Ky Const 26** [id.]; and **K.R.S. 403.750(2)** together with corresponding footnote [31] thereto [supra, page 30 hereof].

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119. On May 19, 2000, the Kentucky Court of Appeals then rendered its **second "Opinion Affirming in Part, Reversing in Part"** [Exhibit "DDDD" hereto] which states, in

hereunto relevant part, as follows:

> "**On remand from this Court's decision,** Akers moved in limine to exclude evidence of certain bad acts. We have scrutinized the record and watched videotape of the hearing on the motion in limine. **It is clear that the trial court failed to follow the instructions on remand.**
>
> The court heard arguments from both sides as to the admissibility of the evidence. **Prior to making its ruling, the court acknowledged that it had not read our decision.**" (Page 15, lines 3 through 15)
>
> "At trial, the court permitted the introduction of extensive evidence of Akers' stalking of Bishop. **While this evidence was relevant to the first-degree stalking, it was not relevant to the count of first-degree assault.**" (Page 15, lines 17 through 21)
>
> "Despite the fact that the trial court used some of the correct vernacular during the hearing on the motion in limine, it failed to properly analyze the admissibility of other bad acts using the **Bell** test. **Without reading our decision the court could not have followed our directives.**" (Page 16, lines 4 through 10)
>
> "For the first-degree stalking charge, **the trial court might have admitted a portion of the evidence with a proper admonition.**" (Page 16, lines 13 through 15, emphasis added)
>
> "**The evidence of the stalking undoubtedly tipped the scales and convinced the jury that Akers had committed first degree assault.** While our opinion following Akers' first trial did not specifically so require, **the trial court should have granted Akers separate trials on each count.**" (Page 20, lines 7 thru 11, emphasis added)

> "...a trial court may not use joint trials at the expense of a defendant's right to a fair trial." (Page 21, 1 & 2, emphasis added)
>
> "Fairness and justice require us to reverse [Akers'] conviction of first-degree assault and remand the case for a new trial." (Page 21, lines 10 thru 12, emphasis added)

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> "Accordingly, ...Akers' conviction of first-degree assault is reversed and this case is remanded with instructions to grant Akers a new trial at which evidence of prior bad acts shall be excluded." (Page 21, lines 14 through 17)

120. The hereinabove "Opinion Affirming in Part, Reversing in Part" became "**FINAL**" on June 19, 2000, as a result of **neither party having filed for "Discretionary Review"** of/by the Kentucky Supreme Court; and the **Assistant Commonwealth's Attorney (Red Corn) adamantly refused to accept or tender any reasonable offer** as to "final resolution" of this **bizarre and outrageous case.**

121. **Facing the likely prospect of being transferred back to Fayette County Detention Center and being further subjected to the tyranny and oppression of Red Corn and Overstreet for an astounding third time around**[134], and under threat that Overstreet would refuse to reinstate Akers' **originally set pre-trial bail for "First-Degree Assault" in the amount of $7,500 Full Cash** (see hereinabove paragraph E-72) **in clear and distinct violation of Article IV-Section 2** and the **Eighth & Fourteenth Amendments** of/to the **United States Consitution; §§ 2, 3, 11, 12, 16, 17, ...**

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[134] See: **FIFTH AMENDMENT** to the **United States Constitution** and corresponding footnote [2] [supra, page 6 hereof]; **14th AMENDMENT to the**

United States Constitution and corresponding footnote [3] [id., pages 8 & 9 hereof]; and Benton v. Maryland, 89 S.Ct. 2056 (1969), i.e., "9. Double jeopardy prohibition of the Fifth Amendment represents fundamental ideal in constitutional heritage and it applies to the states through the Fourteenth Amendment; overruling Palko v. Connecticut, 302 U.S. 319, 58 S.Ct. 149, U.S.C.A. Const. Amends. 5, 14. ...11. Idea underlying constitution prohibition against double jeopardy is that state with all its resources and powers should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrasment, expense and ordeal and compelling him to live in a continued state of anxiety and insecurity, as well as enhancing possibility that even though innocent he may be found guilty. U.S.C.A.Const.Amend.5." (emphasis added)

19, & 26 of the Constitution of Kentucky; and RCr 4.04(d)(ii), RCr 4.16, & RCr 4.54(3) of/to the Kentucky Rules of Criminal Procedure as was the case following the first reversal of Akers' convictions[135]; on July 7, 2000, Akers was forced to enter a plea of "guilty" for "Assault under extreme emotional disturbance" [Exhibit "EEEE"] a "Class D Felony" [see K.R.S. 508.040(2)(a), page 35 hereof] as, apparently, the only means of escaping the "oppression" of Bishop, Red Corn, Overstreet, *et al*, and finally securing Akers' liberty.

122. Notwithstanding the foregoing facts, which clearly demonstrate that any imprisonment of Akers was unconstitutional, unlawful, and improper, *ab initio*[136]; (a) Akers "served" a total imprisonment of ONE THOUSAND, THREE HUNDRED, THIRTY-FIVE (1,335) DAYS pursuant to his hereinabove alleged "crimes", during which: (b) Akers was subjected to the ominous and perpetual threats of:

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[135] See hereinabove paragraphs E-89 together with corresponding footnote [94], E-90 together with corresponding footnote [96], E-92, E-93, E-96, E-99 together with corresponding footnote [103], E-110 through E-112, E-113(d) together with footnote [127], E-116 together with footnote [131], and E-119. See also: 801 SW(2d) 321 (Ky 1990), Ingram v Commonwealth, i.e., "The Kentucky Constitution is superordinate to legislative intent..." (emphasis added)

[136] See: K.R.S. 509.020 Unlawful imprisonment in the first degree [supra,

page 36 hereof], i.e., "(1) A person is guilty of unlawful imprisonment in the first degree when he **knowingly and unlawfully restrains another person under circumstances which expose that person to risk of serious physical injury**. (2) Unlawful imprisonment in the first degree is a Class D felony." (emphasis added). **See also**, ***inter alia***: **TITLE 18 U.S.C. § 1201** [supra, page 12 hereof] and/or **TITLE 18 U.S.C. § 1203** [id.]; **TITLE 18 U.S.C. § 1503** [id., page 13 hereof] and/or **TITLE 18 U.S.C. § 1512** [id., page 14 hereof]; **TITLE 18 U.S.C. §§ 1961, et seq.** [id.] and/or **TITLE 42 U.S.C. § 1983** [id., page 16 hereof] and/or **TITLE 18 U.S.C. § 1985** [id.] **in conjunction with TITLE 18 U.S.C. § 2** [id.] and/or **TITLE 18 U.S.C. § 3** [id.] and/or **TITLE 18 U.S.C. § 4** [id.] and **TITLE 18 U.S.C. § 5** [id.].

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(i) **serious physical injury** and/or **death**, (ii) **numerous life-threatening** and/or **permanently debilitating diseases**, (iii) **extortion** and/or **blackmail**, (iv) **irreparable injury to both his personal and business reputation and career, as well as** (v) **irreparable injury to Akers' overall prospects for any quality of life; yet** (c) Akers had **not been a subject of even a single "disciplinary action"** during his **entire term of imprisonment.**

123. Notwithstanding the foregoing facts, which **clearly demonstrate that any imprisonment of Akers was unconstitutional, unlawful, and improper, *ab initio*[136]**, Akers "served" a total of **ONE THOUSAND NINETY-FOUR (1,094) DAYS** imprisonment **in excess of** any **which could have lawfully resulted from any of his alleged "criminal conduct"**.

124. Notwithstanding the foregoing facts, which **clearly demonstrate that any imprisonment of Akers was unconstitutional, unlawful, and improper, *ab initio*[136]**, Akers "served" **in excess of ONE HUNDRED EIGHTY (180) DAYS** for his "convictions" [See Exhibit "FFFF"] which remain effective as of filing of this "MEMORANDUM & MEMORANDUM OF LAW" and accompanying civil action.

125. Notwithstanding the foregoing facts, which **clearly demonstrate that any imprisonment of Akers was unconstitutional, and unlawful, *ab initio*[136]**, as of September 21, 1995, Akers had sustained injuries to his business, i.e., Coleman/Akers & Akers, Inc. (C/AA), and his personal property, in an aggregate amount **in excess of EIGHT HUNDRED SIXTY THOUSAND AND NO/100 DOLLARS**

($860,000.00) as the proximate result of those unconstitutional

---

and/or unlawful acts of/by the named Defendants as hereinabove set forth, **in detail**.

126. Notwithstanding the foregoing facts, which **clearly demonstrate that any imprisonment of Akers was unconstitutional, unlawful, and improper**, ***ab initio*** [136], Akers sustained a **permanent forty percent (40%) loss and/or impairment of hearing** abilities **as a proximate result** of those unconstitutional and/or unlawful acts of/by the named Defendants as set forth herein, **in detail**.

127. Notwithstanding the foregoing facts, which **clearly demonstrate that any imprisonment of Akers was unconstitutional, unlawful, and improper, *ab initio*** [136], as of filing of the within "MEMORANDUM & MEMORANDUM OF LAW" and accompanying civil action, **Akers has sustained, and will continue to sustain** on a perpetual **and indeterminate basis**, injuries to his businesses, hereinabove "Cadre" and/or "Akers & Akers of Tennessee, Inc." (hereinafter "AAT"), **and in his personal property, in an amount in excess of THREE MILLION, TWO HUNDRED SEVENTY-TWO THOUSAND AND NO/100 DOLLARS ($3,272.000.00) as the proximate result** of those said unconstitutional and unlawful acts of/by the named Defendants.

ARGUMENTS

128. See "**CLAIM(S) FOR RELIEF**", "**CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(C), TITLE 42 U.S.C. § 1983, & TITLE 42 U.S.C. § 1985(3)**", "**COUNT ONE**" through "**COUNT TWENTY-EIGHT**", pages 96 through 128 thereof, filed contemporaneously herewith, i.e., no further "Arguments" are necessary.

CONCLUSION

129. See "**PRAYER(S) FOR RELIEF**", "**CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(C), TITLE 42 U.S.C. § 1983, & TITLE 42 U.S.C. § 1985(3)**" filed contemporaneously herewith, pages 128 and 129 thereof, i.e., no further "Conclusions" are necessary.

VERIFICATION

COMES THE PLAINTIFF, James G. Akers, **without counsel**, and hereby verifies that, to the best of my knowledge, information, and belief, all "facts" represented hereinabove are true; & further accurately represent those events encompassed therein as they occurred and as relate to claims asserted in the herewith accompanying and contemporaneously-filed "**CIVIL ACTION PURSUANT TO: TITLE 18 U.S.C. § 1964(C), TITLE 42 U.S.C. § 1983, & TITLE 42 U.S.C. § 1985(3)**".

s/ James G. Akers
JAMES G. AKERS, Plaintiff

STATE OF TENNESSEE)
) **ss.**
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove James G. Akers has personally appeared before me on this, the 21st day of November, 2000, has acknowledged the foregoing, and subscribed his signature thereto in my presence.

s/ Jill C. Rosenberry
NOTARY PUBLIC, State-at-large

My commission expires: 09/05/2004

CERTIFICATE OF SERVICE

COMES THE AFFIANT, Dorothy M. Mackin, and hereby certifies that: (1) I am not a party to the civil action styled "**JAMES G. AKERS, Plaintiff, V. CAROLYN P. BISHOP, et al, Defendants.**"; (2) I am a **citizen** of the **United States of America** and the **State of Tennessee** therein; (3) I am over the age of 21; (4) to the best of my knowledge, information, and belief, I am duly qualified to execute service of process on behalf of Plaintiff James G. Akers; and (5) I have, on the date last written and notarized hereinbelow, served a true and accurate copy of the foregoing "**MEMORANDUM & MEMORANDUM OF LAW**", together with all "Exhibits" thereto in the form of **"APPENDIX"/RELEVANT "EXHIBITS"** pursuant to the civil action styled "**JAMES G. AKERS, Plaintiff, V. CAROLYN P. BISHOP, et al, Defendants.**", via "**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**", on the named Defendants as follows:

(a) CAROLYN P. BISHOP:
Served Defendant: Carolyn P. Bishop c/o
Central Bank & Trust Co., Inc.
300 West Vine Street
Lexington, Kentucky 40507

(b) DORIS FLEMING:
Served Defendant: Doris Fleming
2133 Winterberry Drive
Lexington, Kentucky 40504

(c) ALLEN I. RUSHING:
Served Defendant: Allen I. Rushing
1440 Queen's Bridge Drive
Knoxville, Tennessee 37922

(d) CBT DOES 1 THRU 40:

[Service inappropriate without leave of Court]

(e) TODD M. LAYNE:
Served Defendant: Todd M. Layne c/o

Southland Christian Church of
Lexington, Inc.
5001 Harrodsburg Road
Nicholasville, Kentucky 40356

(f) DONALD SHANNON:
Served Defendant: Donald Shannon c/o
Bank One, Kentucky, N.A.
201 East Main Street
Lexington, Kentucky 40507

(g) JERRY L. KELLY:
Served Defendant: Jerry L. Kelly
3499 Dabney Drive
Lexington, Kentucky 40509

(h) SCC DOES 1 THRU 50:

[Service inappropriate without leave of Court]

(i) JOHN J. VAUGHAN, M.D.:
Served Defendant: Dr. John J. Vaughan, M.D.
125 East Maxwell Street
Lexington, Kentucky 40502

(j) THOMAS D. CLARK:
Served Defendant: Thomas D. Clark c/o
Fayette [Kentucky] Circuit Court
215 West Main Street
Lexington, Kentucky 40507

(k) KATHERINE WITT:
Served Defendant: Katherine Witt c/o
Fayette County Sheriff's Office
136 N. Martin Luther King Blvd.
Lexington, Kentucky 40507

(l) FCS DOES 1 THRU 30:

[Service inappropriate without leave of Court]

(m) PAMELA MILLER:
Served Defendant: Pamela Miller c/o
L. F. U. C. G.
200 East Main Street
Lexington, Kentucky 40507

(n) LFG DOES 1 THRU 60:

[Service inappropriate without leave of Court]

(o) LOU A. RED CORN:

Served Defendant: Lou A. Red Corn c/o
Commonwealth's Attorney's Office
116 North Upper Street
Lexington, Kentucky 40507

(p) CAO DOES 1 THRU 20:

[Service inappropriate without leave of Court]

(q) FCC DOES 1 THRU 10:

[Service inappropriate without leave of Court]

(r) REBECCA M. OVERSTREET:
Served Defendant: Rebecca M. Overstreet
Fayette [Kentucky] Circuit Court
215 West Main Street
Lexington, Kentucky 40507

(s) CINDY G. SWARTZ:
Served Defendant: Cindy G. Swartz c/o
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(t) ERNEST W. WILLIAMS:
Served Defendant: Ernest W. Williams, Atty.-at-Law
320 Main Street, Suite 101
Franklin, Tennessee 37064

(u) TODD D. FERGUSON:
Served Defendant: Todd D. Ferguson
Kentucky Atty. General's Office
1024 Capital Center Drive
Frankfort, Kentucky 40601-8204

(v) PAMELA D. GOODWINE:

Served Defendant: Pamela D. Goodwine c/o
Fayette [Kentucky] District Court
136 N. Martin Luther King Blvd.
Lexington, Kentucky 40507

s/ Dorothy M. Mackin
DOROTHY M. MACKIN,
Agent for Plaintiff
c/o Post Office Box 3648
Brentwood, Tennessee 37024

STATE OF TENNESSEE)
) ss.
COUNTY OF DAVIDSON)

THIS IS TO CERTIFY that the hereinabove Dorothy M. Mackin has personally appeared before me on this, the 21st day of November, 2000, has acknowledged the foregoing, and subscribed her signature thereto in my presence.

s/ Jill C. Rosenberry
NOTARY PUBLIC, State-at-large

My commission expires: 09/05/2004

Supreme Court, U.S.
FILED
MAY 20 2002
OFFICE OF THE CLERK

DOCKET NUMBER 01-1619

In The

SUPREME COURT OF THE UNITED STATES

JAMES AKERS,

Petitioner,

v.

CAROLYN P. BISHOP, et al.

On Petition for Writ of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

BRIEF FOR RESPONDENTS, TODD M. LAYNE and DONALD SHANNON

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Nashville, Tennessee 37219
Attorney for Respondents
Todd M. Layne and
Donald Shannon

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(d) CBT Does 1 through 40 [known only as that group of "persons" at Central Bank & Trust Company, Inc., Lexington, Kentucky, and yet unidentified];

(e) Todd M. Layne;

Counsel-of-record:

(f) Donald Shannon;
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(h) SCC Does 1 Through 50 [known only as that group of "persons" at Southland Christian Church of Lexington, Inc., Nicholasville, Kentucky, and as of yet unidentified pursuant to discovery herein];

(j) Thomas L. Clark;
(o) Lou A. Red Corn;
(r) Rebecca M. Overstreet;
(s) Cindy G. Schwartz;
(u) Todd D. Ferguson;
(w) Pamela R. Goodwine;

Counsel-of-record:

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(k) Katherine H. Witt;

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Lexington, Kentucky 40588-0951
Telephone: (859) 255-2424

(l) FCS Does 1 through 30 [known only as that group of "persons" at the Office of the Fayette County (Kentucky) Sheriff, Lexington, Kentucky, and, as yet, unidentified pursuant to discovery herein];

(m) Pamela Miller;
(n) FCS Does 1 through 60;

Counsel-of-record:

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Lexington-Fayette Urban Co.
200 East Main Street
Lexington, Kentucky 40507
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(p) CAO Does 1 through 20 [known only as that group of "persons" at the Commonwealth's Attorney's Office for Kentucky's Twenty-second Judicial District, Lexington, Kentucky, yet unidentified];

(p) FCC Does 1 through 10 [known only as a group of individual "persons" at the Office of the Fayette (Kentucky) Circuit Court Clerk, Lexington, Kentucky, and as of yet unidentified];

(t) Earnest W. Williams;

Counsel-of-record:

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STATEMENT OF JURISDICTION

This appeal to this Honorable Court is pursuant to Rule 10 of the Rules of the Supreme Court of the United States. Pursuant to Rule 13 of the Rules of the Supreme Court of the United States, the Petitioner is to file his Writ for Certiorari within ninety (90) days after entry of the judgment from the United States Court of Appeals. The U.S. Court of Appeals, Sixth Circuit, under Docket Number 01-6243, filed on or about January 24, 2002, an Order dismissing the appeal of the Petitioner (App. 1). The Petition for Writ of Certiorari was filed with this Court on April 24, 2002.

CONCISE STATEMENT OF CASE

The Petitioner, James Akers, filed a lawsuit in the United States District Court, Middle District of Tennessee, Nashville Division, bearing Docket Number 3:00-1142, which was assigned to U.S. District Judge Robert L. Echols. Judge Echols adequately summarized the facts of the case in his Memorandum opinion, entered on September 8, 2001 (App. 3). To summarize from that Memorandum, the pro se plaintiff filed a 134-page Complaint against sixteen individuals, and numerous unnamed defendants, wherein he alleged violations of his constitutional rights under 42 U.S.C. § 1983, conspiracy to violate his constitutional rights under 42 U.S.C. § 1985, and violations of the Racketeer and Influenced Corrupt Organizations Act (RICO), 18 U.S.C. § 1961-68. The Court accepted subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (1994).

The lawsuit pertains to the plaintiff's criminal convictions for stalking and assaulting the defendant, Carolyn Bishop, the plaintiff's former wife. The defendants in this case include judges, prosecutors and witnesses involved in the criminal proceedings which took place in state courts in Kentucky. The plaintiff alleges in this lawsuit that his Kentucky state court convictions resulted from an unlawful conspiracy between the defendants.

In the trial court, these Respondentss, Todd Layne and Donald Shannon, moved to dismiss the case for lack of personal jurisdiction

pursuant to F.R.C.P. 12(b)(2), for lack of venue pursuant to F.R.C.P. 12(b)(3) and for failure to state a claim upon which relief can be granted pursuant to F.R.C.P. 12(b)(6). In the alternative, these Respondentss requested that Judge Echols transfer the case pursuant to either 28 U.S.C. § 1404(a)(1994) or 28 U.S.C. § 1406(a)(1994) to the United States District Court for the Eastern District of Kentucky.

The District Court granted the defendants' Motion to Transfer this matter to the U.S. District Court for the Eastern District of Kentucky. The Court "denied as moot" the defendants' Motions to Dismiss (App. 2).

The Petitioner then appealed to the U.S. Court of Appeals, Sixth Circuit, under docket number 01-6243, the order to transfer this lawsuit from the U.S. District Court for the Middle District of Tennessee, Nashville Division, to the U.S. District Court for the Eastern District of Kentucky, Lexington Division. On January 24, 2002, an Order was entered by the U.S. Court of Appeals, Sixth Circuit, setting forth that the appellate court lacked jurisdiction over this appeal, since the order transferring the case was not appealable and that, specifically, the ruling on a Motion to Transfer was not appealable under the collateral order exception. The Court of Appeals dismissed the appeal of the Petitioner (App. 1).

ARGUMENT

The Petitioner has presented for review five separate questions. Specifically, those questions presented by the Petitioner for review are as follows:

(I) Whether venue properly lies with the United States District Court for Middle Tennessee District – Nashville Division;

(II) Whether the "ORDER" transferring venue to Eastern District of Kentucky, at Lexington, is "collateral to the merits" of the case;

(III) Whether transfer of the case to the United States District Court of Kentucky, at Lexington, will result in irreparable damage to Akers;

(IV) Whether the issues respecting transfer of case to the Eastern District of Kentucky, at Lexington, are "too important to be deferred until the whole case is adjudicated"; and

(V) Whether "ends of justice" require venue to remain in United States District Court for the Middle Tennessee District – Nashville Division.

It should be noted that these Respondents do not agree with the statements of fact or law that are included in the Petition. Instead, these Respondents rely upon the summary of facts and applicable law, as set forth further

herein. The Petitioner has mistakenly set forth his "theories of conspiracy", which he has yet to have litigated, which bear no relevancy to the sole issue before this Court, as to whether or not a writ of certiorari should be granted and, in particular, whether or not there are compelling reasons proven by the Petitioner to allow a writ to be granted. These Respondents deny that they bear any responsibility or fault with regard to the basic allegations, accusations and claims set forth, both in the Petitioner's original Complaint filed in the U.S. District Court for the Middle District of Tennessee, or that are included in the Petition for a Writ of Certiorari. Also, these Respondents specifically deny and do not agree that the transfer of this case to the U.S. District Court in Kentucky will result in irreparable damage to the Petitioner; that the issues respecting transfer are too important to be deferred until the whole case is adjudicated; or that the "ends of justice" require venue to remain in the United State District Court for the Middle District of Tennessee.

It is the position of these Respondents that the real question for review from this Court is: (1) Whether the Petitioner has compelling reasons to require this Court to exercise its judicial discretion and grant a writ of certiorari, pursuant to Rule 10 of the Rules of the Supreme Court of the United States; and (2) whether the Order entered by the District Court transferring this lawsuit from one court to another is even an appealable order subject to review by this Honorable Court.

1. Whether the Petitioner has compelling reasons to require this Court to exercise its judicial discretion and grant a writ of certiorari pursuant to Rule 10 of the Rules of the Supreme Court of the United States.

As set forth in Rule 10 of the Rules of the Supreme Court of the United States, a "review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling or fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals;

(c) a state court or a United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court."

In the instant case, and the issues presented in this appeal, do not address any of the criteria set forth in Rule 10. There is no compelling reason set forth by the Petitioner in his Petition to display or describe a compelling reason for this Court to grant his request. There is no appellate

decision in conflict with the decision of another court on an important matter, nor has there been any departure by the U.S. Court of Appeals to create any kind of conflict on a federal law or question which would indicate a compelling reason for this Court to address this issue. In short, the appeal pertains solely to an Order transferring all of the claims set forth by the plaintiff in this lawsuit from the U.S. District Court in Tennessee to the U.S. District Court in Kentucky. The Petitioner has set forth no compelling reason as to show why the earlier orders should be reversed and why he should not be required to pursue his claims in the State of Kentucky, as opposed to the State of Tennessee. Clearly, this is not an issue that this Honorable Court should have to address.

2. Whether the Order entered by the District Court transferring this lawsuit from one court to another is even an appealable order subject to review by this Honorable Court.

In his Memorandum opinion (App. 3) supporting the Order that was entered transferring this lawsuit to the U.S. District Court for the Eastern District of Kentucky, Judge Echols set forth that 28 U.S.C. § 1391(b)(2)(1994) was the applicable venue statute which applied to this case which states,

> A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in...a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred...(App 2,3)

The Trial Court was well within its right to transfer this case to the U.S. District Court for the Eastern District of Kentucky, since the Court found that most, if not all, of the events alleged to have occurred, as set forth in the Complaint, were in the Eastern District of Kentucky, including the plaintiff's arrest, a state court trial, sentencing, and the location of his incarceration. The Court concluded correctly that "a substantial part of the events or omissions giving rise to the claims occurred in the Eastern District of Kentucky" (App. 3).

The U.S. Court of Appeals, Sixth Circuit, correctly set forth in its Order that the Order to Transfer was not an appealable order and that the Court of Appeals lacked jurisdiction to reverse the Trial Court's Order (App. 1). Such an order is not a final and appealable order, nor was jurisdiction present in the U.S. Court of Appeals to support such an appeal. 28 U.S.C. § 1291. It has been held that such orders are interlocutory and are not immediately reviewable by appeal. See SongByrd, Inc. v. Estate of Grossman, 206 F.3d. 172, 176 (2d Cir.) cert. denied, 531 U.S. 824 (2000); Lemon v. Druffel, 253 F.2d. 680, 683 (6th Cir. 1958) As set forth by the Court of Appeals in the instant case, a ruling on a Motion to Transfer is not appealable under the collateral order exception. F.D.I.C. v. McGlamery, 74 F.3d 218, 222 (10th Cir. 1996); Middlebrooks v. Smith, 735 F.2d. 431, 432 (11th Cir. 1984).

Based upon the foregoing, it is clear that the Trial Court's Order was not a final order, which would allow it to be reviewable or appealable to the appellate level. The Court of Appeals did not even have jurisdiction in which to entertain the question on the Order to Transfer.

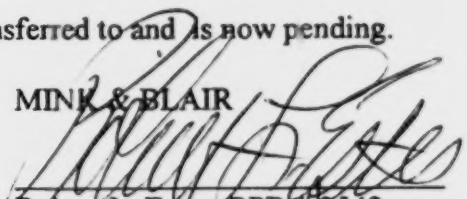
CONCLUSION

The Petitioner has presented certain issues to the Court for its review, but has not set forth or adequately evidenced any compelling reason which will allow this Court to use its judicial discretion to grant the Petition for Writ of Certiorari. The Petitioner still has this lawsuit pending, and, indeed, all of the claims asserted by the Petitioner in his original Complaint, as well as all allegations that he has set forth in his Petition for Writ of Certiorari, have yet to be litigated or adjudicated. The only thing that has transpired is that the Trial Court ordered the transfer of this case to the appropriate venue; thus, none of the substantive claims of the Plaintiff were adjudicated by the Order of the U.S. District Court for the Middle District of Tennessee from which Plaintiff appealed nor by the U.S. Court of Appeals for the Sixth Circuit which he seeks a Petition for Certiorari.

The Petitioner pursued an appeal to the U.S. Court of Appeals that was not appropriate, and was summarily dismissed. The Petitioner bothers this Honorable Court with a request to set aside an Order of Transfer from one Trial Court to another Trial Court, which was not even appealable to the appellate level. The Petitioner has shown no harm, nor proven any theory resulting in harm to him, which would present a compelling reason for the Court to grant his Petition for Writ of Certiorari and consider this matter any further. The issues in this lawsuit should be appropriately

litigated in the United States District Court for the Eastern District of Kentucky, where this case has been transferred to and is now pending.

MINK & BLAIR



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APPENDIX

Exhibit 1 - Order from United States Court of Appeals, Sixth Circuit, Docket No. 01-6243, filed January 24, 2002, dismissing the Petitioner's appeal

Exhibit 2 - Order from United States District Court, Middle District of Tennessee, Nashville Division, bearing Docket No. 3:00-1142, entered September 18, 2001, granting a Motion to Transfer and denying, as moot, the defendant's Motions to Dismiss

Exhibit 3 - Memorandum from U.S. District Court, Middle District of Tennessee, Nashville Division, bearing Docket No. 3:00-1142, explaining the basis for the granting of the Motion to Transfer this matter to the United States District Court for the Eastern District of Kentucky.

FILED
JAN 24 2002
Leonard Green, Clerk

No. 01-6243

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES G. AKERS,	)	
	)	
Plaintiff-Appellant,	)	ORDER
	)	
v.	)	NOT RECOMMENDED FOR
CAROLYN P. BISHOP, et al.,	)	FULL-TEXT PUBLICATION
	)	Sixth Circuit Rule 28(g) limits
Defendants-Appellees.	)	citation to specific situations. Please See Rule 28(g) before citing in a proceeding in a court in the Sixth Circuit limited, a copy must be served on other parties and the Court. This notice is to be prominently displayed if this decision is reproduced.

Before: KENNEDY and DAUGHTREY, Circuit Judges; BELL,* Chief District Judge.

This matter is before the court upon consideration of motions of the appellees to dismiss the appeal on the basis that the order transferring the case to a different district court is not a final or appealable order. The appellant responded arguing that the order is appealable under the collateral-order doctrine. *See Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546-47 (1949). The appellant also filed a motion seeking

* The Honorable Robert Holmes Bell, Chief United States District Judge for the Western District of Michigan, sitting by designation.

reconsideration of the clerk's letter holding the briefing schedule in abeyance pending a ruling on the motions to dismiss.

A review of the documents before the court indicates that the appellant filed a civil complaint in the United States District Court for the Middle District of Tennessee. The court transferred the case to the United States District Court for the Eastern District of Kentucky. Appellant appealed the order transferring the case.

This court lacks jurisdiction over this appeal. The order transferring the case is not appealable. *See SongByrd, Inc. v. Estate of Grossman* , 206 F.3d 172, 176 (2d Cir .), *cert. denied* 531 U.S. 824 (2000); *Lemon* v. *Druffel,* 253 F.2d 680, 683 (6th Cir. 1958). A ruling on a motion to transfer is not appealable under the collateral order exception. *FDIC v. McGlamery,* 74 F.3d 218, 222 (lOth Cir. 1996); *Middlebrooks v. Smith,* 735 F.2d 431, 432 (11th Cir. 1984).

It is ordered that the appeal is dismissed. The motion for reconsideration is denied as moot.

ENTERED BY ORDER OF THE COURT

Clerk

This document was entered on the docket in compliance with Rule 56 and/or Rule 79(a).
FRCP on 9/18/01 By JR

FILED
JAN 24 2002
Leonard Green, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JAME S G. AKERS ,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:00-1142
	)	JUDGE ECHOLS
CAROLYN P. BISHOP, DORIS TODD M. LAYNE, DONALD SHANNON, JERRY L. KELLY, JOHN J. VAUGHN, THOMAS D. CLARK, KATHERINE WITT. PAMELA MILLER, LOU A. RED CORN, REBECCA M. OVERSTREET, CINDY G. SWARTZ, ERNEST W. WILLIAMS, TODD D. FERGUSON, PAMELA D. GOODWINE, and various JOHN and JANE DOES,	)	
	)	
Defendants.	)	

ORDER

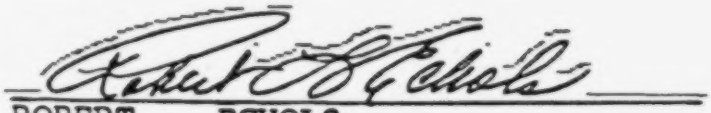
Presently pending before the Court are Motions to Dismiss by defendants Bishop, Williams, and Rushing (Docket Entry Nos 55,71, & 73 and Motions to Dismiss or Transfer by all other Defendants (Docket Entry Nos. 31, 34, 37, 38, 42, 51, & 76). Plaintiff has filed several documents in opposition.

For the reasons explained in the Memorandum entered contemporaneously herewith, Defendants' Motions to Transfer are hereby

GRANTED, and this case is hereby TRANSFERRED to the United States District Court for the Eastern District of Kentucky.

Defendants' Motions to Dismiss are hereby DENIED AS MOOT.

It is so ORDERED.



ROBERT ECHOLS
UNITED STATES DISTRICT JUDGE

This document was entered on the docket in compliance with Rule 56 and/or Rule 79(a). FRCP on 9/18/01 By JR

FILED
JAN 24 2002
Leonard Green, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JAMES G. AKERS ,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:00-1142
	)	JUDGE ECHOLS
CAROLYN P. BISHOP, DORIS FLEMING, ALLEN I. RUSHING, TODD M. LAYNE , DONALD SHANNON, JERRY L. KELLY, JOHN J. VAUGHN, THOMAS D. CLARK, KATHERINE WITT, PAMELA MILLER, LOU A. RED CORN, REBECCA M. OVERSTREET, CINDY G. SWARTZ, ERNEST W. WILLIAMS, TODD D. FERGUSON, PAMELA D. GOODWINE, and various JOHN and JANE DOES,	)	
	)	
Defendants.		

MEMORANDUM

Presently pending before the Court are Motions to Dismiss by Defendants Bishop, Williams, and Rushing (Docket Entry Nos. 55,71, & 73) and Motions to Dismiss or Transfer by all other Defendants (Docket Entry Nos. 31, 34, 37, 38, 42, 51 & 76). Plaintiff has filed several documents in opposition.

For the reasons explained herein, Defendants' Motions to Transfer will be GRANTED, and this case will be TRANSFERRED to the United States District Court for the Eastern District of Kentucky. Defendants' Motions to Dismiss will be DENIED AS MOOT.

Plaintiff, who proceeds pro se, has filed a 134-page Complaint (Docket Entry No. 1) against sixteen individuals and numerous unnamed defendants. He alleges claims for violations of his constitutional rights under 42 U.S.C. § 1983 (1994 & Supp. IV), conspiracy to violate his constitutional rights under 42 U.S.C. § 1985 (1994), and violations of the Racketeer and Influenced Corrupt Organizations Act (RICO), 18 U.S.C. § 1961-68 (1994 & Supp. IV). Because the claims are based on federal law, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (1994).

This lawsuit arises from Plaintiff's criminal convictions for stalking and assaulting Defendant Carolyn Bishop, his former wife. The defendants include judges, prosecutors, and witnesses involved in the criminal proceedings which took place in state courts in Kentucky. Plaintiff alleges in the instant suit that his Kentucky state court convictions resulted from an unlawful conspiracy between the Defendants.

Defendants now move to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2), for lack of venue pursuant to Rule 12(b)(3), and for failure to state a claim upon which relief can be granted pursuant to

Rule 12(b)(6) of the Federal Rules of Civil Procedure. All Defendants except Bishop, Williams, and Rushing seek, in the alternative, to have the case transferred pursuant to either 28 U.S.C. § 1404(a) (1994) or 28 U.S.C. § 1406(a) (1994) to the United States District Court for the Eastern District of Kentucky.

The applicable venue statute states,

A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in ...a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred. ... 28 U.S.C. § 1391(b)(2) (1994).

The Court has reviewed Plaintiff's lengthy Complaint, and the only events alleged to have occurred in this District are some telephone calls to and from his former wife; Defendant Carolyn Bishop, in Lexington, Kentucky, which may have violated a protective order and formed the basis for contempt charges, and his extradition in October 1995 from Tennessee to Kentucky after his arrest. All other events alleged in the Complaint occurred *in* the Eastern District .of Kentucky, including his divorce, the events that led to his arrests, his trial in state court, sentence, and the location of his incarceration. Therefore, based upon the record before the Court, the Court concludes that "a substantial omission part of the events or omissions giving rise to the claim [s] occurred" in the Eastern

District of Kentucky. Only a few tangential acts/events are alleged to have occurred in the Middle District of Tennessee. Consequently, the Court finds that venue does not *lie in* this District under 28 U.S.C. § 1391(b)(2).

However, RICO claims have a special venue statute, 18 U.S.C. § 1965 (1994), which states in part:

> (a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.
>
> (b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

18 U. S. C. § 1965 (a) and (b).

The only Defendant who resides, is found, has an agent or transacts his affairs *in* this District *is* Ernest Williams.[1]

Apparently, Plaintiff does not dispute that venue cannot lie in this District as to his RICO claims against the other fifteen Defendants allegations based on 18 U.S.C. § 1965 (a). Giving Plaintiff's allegations

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[1] Several Defendants contend that Plaintiff has fraudulently joined Defendant Williams in order to avail himself of the RICO venue statute. As the text of the statute indicates, a district court must have personal jurisdiction over at least one defendant pursuant to 1965(a) *in* order to bring the other members of an interstate conspiracy before the court pursuant to 1965(b). See Butcher's Union Local No. 498, United Food & Commercial Workers v. SDC Inv. Inc., 788 F.2d 535, 539 (9th Cir. 1986). Since it *is* not essential to the Court's resolution of the pending motions, the Court expresses no opinion on this issue.

the liberal construction afforded pro se litigants, however, he maintains that venue exists here as to the claims against the remaining Defendants pursuant to 18 U.S.C. § 1965(b). As expressly stated in the statute, before a district court can summons parties from other districts to answer to a RICO claim, it must find that "the ends of justice" so require.[2] What is required to meet "the ends of justice" requirement under the statute is not crystal clear, but, at a minimum, the Court must determine that there *is* no other district which has personal jurisdiction and venue over all members of the alleged RICO conspiracy. See Butcher's Union Local No. 498, United Food & Commercial Workers v. SDC Inv., Inc., 788 F.2d 535, 538-39 (9th Cir. 1986). The Second Circuit, *in* discussing an assertion of personal jurisdiction based upon 18 U.S.C. § 1965(b), stated as follows,

> This jurisdiction *is* not automatic but requires a showing that the "ends of justice" so require. This is an unsurprising limitation. There *is* no impediment to prosecution of a civil RICO action in a court foreign to some defendants if it is necessary, but the first preference, as set forth in § 1965(a), *is* to bring the action where suits are normally expected to be brought. Congress has expressed a preference in § 1965 to avoid, where possible haling defendants into far flung fora.

---

[2] Even then, a district court *is* not mandatorily required to bring the other parties before the court, since the statute provides only that the Court "may" cause such parties to be summoned and process be served *in* other districts. See 18 U.S.C. § 1965 (b).

PT United *Can Co.* Ltd. v. Crown Cork & Seal Co., Inc., 138 F.3d 65, 71-72 (2d *Cir.* 1998).

Based upon the record in this case, the Court finds that the "ends of justice" do not require that the other fifteen defendants be haled into this Court from other districts. First the entire case can be litigated in the Eastern District of Kentucky, where most of the Defendants are located and almost all the alleged illegal acts occurred. As noted previously, venue is proper in that District and said District Court has personal jurisdiction over every Defendant under Section 1965. More specifically, thirteen Defendants live there; Defendant Rushing, who now lives in Knoxville, lived there at the time of the events that led to this lawsuit; and Defendant Williams, who lives in Franklin, Tennessee, represented Plaintiff in that District during his trial there. See Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) personal jurisdiction requires "certain minimum contacts" with the forum state and "that the maintenance of the suit [against the non-resident defendant] does not offend traditional notions of fair play and substantial justice."). Based upon the facts and circumstances of this case, the Court finds that justice does require that this case be litigated here.

Second, even if the Court permitted Plaintiff to litigate his RICO claims here, venue would still be improper as to his Section 1983 and Section 1985 claims because a substantial part of the events giving rise to plaintiff's claims did not occur in. this District (28 U.S.C. § 1391(b)(2) and

Title 18 U.S.C. § 1965 (a) applies only to the RICO claims; not the Section 1983/Section 1985 claims. There has been no suggestion that this Court should dismiss the Section 1983/Section 1985 claims or sever and transfer them to the Eastern District of Kentucky, and proceed to trial here on the RICO claims. Such a course of action would not promote judicial economy and would delay and add additional hardships to the parties. Therefore, for the reasons stated, the Court concludes that venue does not properly lie in this District for Plaintiff's RICO claims.

Having determined that proper venue does not lie in this District, the Court next addresses the issue of dismissal or transfer. Title 28 U.S.C. § 1406(a) provides as follows:

> The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

As previously noted, this suit could have been brought in the Eastern District of Kentucky, and the venue and personal jurisdiction requirements are satisfied there as to every claim of the Plaintiff. Since an outright dismissal might subject Plaintiff's claims to legal defenses under applicable statutes of limitations, the Court finds that it is in the interests of justice to transfer the case to the Eastern District of Kentucky.[3]

---

[3] Given this disposition, the Court need not address Defendants' other arguments including the contentions of the many Defendants who claim that this Court lacks personal jurisdiction over them. See Pittock v.

For the foregoing reasons, Defendants' Motions to Transfer will be GRANTED, and this case will be TRANSFERRED to the United 'States District Court for the Eastern District of Kentucky, Defendants' Motions to Dismiss will be DENIED AS MOOT.

An appropriate order will be entered.

ROBERT ECHOLS
UNITED STATES DISTRICT JUDGE

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docket in compliance with Rule 56
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Otis Elevator Co., 8 F.3d 325, 329 (6th Cir. 1993) (citing Goldlawr, Inc. v. Heiman, 369 U.S. 463 (1962)) (transfer under 1406(a) is permissible even where there is both improper venue and lack of personal jurisdiction in the transferor forum) .

CERTIFICATE OF SERVICE

The undersigned certifies that a true and exact copy of the foregoing document has been forwarded to the parties listed below via First Class U.S. Mail:

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On this the 20th day of May, 2002.

Robert L. Estes